Prince Court Medical Centre Sdn Bhd v Lim Yoke Har (suing through his son and litigation representative, Goh Seng Cha) & Ors and another suit

HIGH COURT (KUALA LUMPUR) — APPEAL SUIT NOS WA-22NCvC-397–05 OF 2021 AND WA-23NCvC-70–12 OF 2019

LEONG WAI HONG JC

23 OCTOBER 2024

Tort — Negligence — Medical negligence — Elderly woman patient admitted to private hospital for dengue fever became bedridden and fell into persistent vegetative state after she fell to floor from hospital bed — Whether mechanical failure of guard rails on patient's bed caused the fall — Whether despite such failures having occurred many times before, hospital never replaced its old faulty beds with new ones — Whether hospital was wholly at fault for condition patient was in — Whether besides host of special and general damages, hospital had to pay patient aggravated damages for trying everything possible to evade liability including blaming patient and her family for causing the fall

The two suits herein — Suit 70 and Suit 397 — arose from a patient's fall from her hospital bed at the Prince Court Medical Centre ('Prince Court') where she was admitted for treatment for dengue fever. The 75-year-old patient, Lim Yoke Har ('Lim'), who had previously been 'an independent, active and cheerful person who enjoyed gardening and cooking for her children', suffered severe brain damage in the fall which left her bedridden and in a 'persistent vegetative state', unable to talk, swallow, move, breathe well without support or control her bladder and bowel movements. Lim's son had taken her to Prince Court on 19 September 2018 after she had had a fall at home. At the hospital, Dr Nick Chong attended to Lim and admitted her after she was found to be suffering from dengue fever. Lim was recovering well and was due to be discharged on 26 September but at about 2am that day, she fell to the floor from her hospital bed despite the night staff nurse ('Nurse Zulia') having properly secured the bed's guard rails and spacers minutes earlier. A brain scan revealed bleeding in the brain and Lim underwent several procedures to not only deal with the bleeding but also to remove retained secretions from her lungs and to insert a tube in the trachea to aid her breathing. Lim was only discharged in late December after spending three months at the hospital, much of the time in the intensive care or high-dependency units. In Suit 70, Lim, through her son and litigation representative, sued Prince Court, Dr Nick Chong and Nurse Zulia for negligence for causing her to be in the condition she was in. In Suit 397, Prince Court sued Lim and her three children (who had

stood as guarantors) for full payment of the hospital's RM84,000 bill. Lim and her children fully settled that part of Prince Court's bill relating to the dengue fever treatment but refused to pay all fees and expenses claimed from the time of Lim's fall. The parties later agreed that if Lim succeeded in Suit 70, then Suit 397 would be dismissed as a result. As the evidence unfolded during the course of the trial, Lim conceded that no liability should be found against Dr Nick Chong.

Held, allowing Lim's claim in Suit 70 only as against Prince Court, dismissing the claims against Dr Nick Chong and Nurse Zulia and dismissing Suit 397. The detailed list of special, general and aggravated damages awarded to Lim is as set out in para 157 of the judgment:

(1) Based on all the evidence, the court found that Lim's fall at Prince Court was due to a mechanical malfunctioning of the side guard rails of the 'old paramount bed' she was lying on, causing the rails to collapse and thereby causing Lim to roll off the bed. Dr Nick Chong's testimony that he had seen such mechanical failures happen many times before was not contradicted. Although such failures were common knowledge, Prince Court failed to check and replace the old faulty beds until the tragic fall in the instant case happened (see paras 75–77 & 114).

(2) The testimonies of both Dr Nick Chong and Nurse Zulia established that Lim was 'just too weak' physically to have climbed over the bed's guard rails and bed spacer on her own and that, in any case, there was no reason for her to have done so (see paras 78–79, 83(h) & (i)).

(3) Adverse inference under s 114(g) of the Evidence Act 1950 was invoked against Prince Court for failing to: (a) call witnesses to shed light on the non-disclosure of the incident reports prepared by the nurses on duty as well as the internal nursing review that was conducted into the cause of the fall; and (b) call the person or persons in Prince Court who made the decision not to report Lim's fall to the Ministry of Health ('MOH') pursuant to MOH Director-General's Directive No 1 of 2010 to all private healthcare facilities to report any unforeseeable or unanticipated incidents as soon as they occurred. Prince Court had caused unnecessary wastage of time at the trial by failing to disclose two important reports which, if disclosed, would have shown that the most likely cause of the fall was a mechanical failure of the bed's cot side. The two documents were Prince Court's root-cause analysis report and its inquiry report on the incident. Prince Court had also shifted blame onto Lim and her family members for the fall. In its letter to them dated 26 October 2018, Prince Court stated that 'in view of Lim's fall at home on her admission day and her general health condition, family members were encouraged to room in with her'. However, in its subsequent letter to them dated 9 January 2019, Prince Court denied any knowledge of Lim's fall at home

prior to her admission and asserted that if it had known of that fact 'her admission would have been different' (see paras 21–23, 26–28, 42–43, 63 & 69).

(4) Lim failed to make out a case of negligence against Nurse Zulia. Hence, the claim against her was dismissed. Going by the medical records and reports disclosed during the pre-action stage, It was reasonable for Lim to have cited Dr Nick Chong as a defendant. With the subsequent late disclosure of evidence, including the nursing review documents ordered to be disclosed by the court, it became clear that there was nothing Dr Nick Chong could have done to prevent the fall. Lim's counsel, in his closing address, also conceded that no liability should be found against Dr Nick Chong. Accordingly, the claim against him was dismissed with a Sanderson order that Prince Court be liable for paying the costs that were payable by Lim to Dr Nick Chong (see paras 84, 88, 136 & 140–141).

(5) Prince Court was ordered to pay Lim RM1m in aggravated damages for the following reasons: (a) for blaming Lim for her fall by alleging that she attempted to dismount from the bed and failed to ensure that a family member was present to attend to her; (b) for shifting the blame for Lim's fall onto her family members via the contradictory letters dated 26 October 2018 and 9 January 2019. This shifting of blame relied on a lie which was exposed during cross-examination; (c) for the deliberate non-disclosure of material evidence, ie, the incident reports prepared by the nurses on duty and the internal nursing review conducted into the fall. And after the court had ordered their disclosure, Prince Court had deliberately failed to disclose the complete documents; (d) for suppressing evidence and knowledge of the cause of the fall which resulted in Lim suing Dr Nick Chong and Nurse Zulia as well. This caused unnecessary stress to them apart from an attack on their professional reputations from the time the suit was filed until decision was delivered; (e) for failing to report the fall to the MOH within 24 hours or immediately thereafter and thereby avoiding a statutory inquiry into the fall; (f) for perverting the course of justice; and (g) for not taking prompt action to replace its old beds with new ones after knowing that cot side mechanical failures were a common occurrence (see paras 32 & 114–119).

[Bahasa Malaysia summary

Kedua-dua saman di sini — Saman 70 dan Saman 397 — adalah berkenaan tuntutan pesakit yang terjatuh dari katil hospitalnya di Pusat Perubatan Prince Court ('Prince Court') di mana dia dimasukkan untuk rawatan demam denggi. Pesakit berusia 75 tahun, Lim Yoke Har ('Lim'), yang sebelum ini merupakan 'seorang yang berdikari, aktif dan ceria yang gemar berkebun dan memasak untuk anak-anaknya', mengalami kerosakan otak yang teruk ketika terjatuh

dan menyebabkan beliau terbaring di katil dan dalam 'keadaan vegetatif yang berterusan', tidak dapat bercakap, menelan, bergerak, bernafas dengan baik tanpa sokongan atau mengawal pundi kencing dan pergerakan ususnya mengalami masalah. Anak lelaki Lim telah membawanya ke Prince Court pada 19 September 2018 selepas dia terjatuh di rumah. Di hospital itu, Dr Nick Chong merawat Lim dan menerimanya selepas dia didapati menghidap demam denggi. Lim pulih dengan baik dan sepatutnya dibenarkan keluar pada 26 September namun pada sekitar pukul 2 pagi hari itu, dia jatuh ke lantai dari katil hospitalnya walaupun jururawat kakitangan malam ('Jururawat Zulia') telah mengikat rel pelindung katil dan spacer dengan betul beberapa minit sebelum itu. Imbasan otak menunjukkan terdapat pendarahan di otak dan Lim menjalani beberapa prosedur untuk bukan sahaja menangani pendarahan tetapi juga untuk mengeluarkan rembesan dari paru-parunya dan memasukkan tiub ke dalam trakea untuk membantu pernafasannya. Lim hanya dibenarkan keluar pada akhir Disember selepas menghabiskan tiga bulan di hospital,kebanyakannya di unit rawatan rapi atau unit separa rawatan rapi. Dalam Saman 70, Lim, melalui anak lelaki dan wakil litigasinya, menyaman Prince Court, Dr Nick Chong dan Jururawat Zulia kerana kecuaian kerana menyebabkan kerana kecederaan yang dialaminya. Dalam Saman 397, Prince Court menyaman Lim dan tiga anaknya (sebagai penjamin) untuk membayar penuh bil rawatan hospital sebanyak RM84,000. Lim dan anak-anaknya menyelesaikan sepenuhnya sebahagian bil Prince Court yang berkaitan dengan rawatan demam denggi tetapi enggan membayar semua yuran dan perbelanjaan yang dituntut sejak Lim jatuh. Pihak-pihak kemudiannya bersetuju bahawa sekiranya Lim berjaya dalam Saman 70, maka Saman 397 akan ditolak akibatnya. Ketika perbicaraan, Lim mengakui bahawa tiada liabiliti harus dikenakan terhadap Dr Nick Chong.

Diputuskan, membenarkan tuntutan Lim di Saman 70 setakat tuntutan terhadap hospital Prince Court, mengenepikan tuntutan terhadap Dr Nick Chong dan jururawat Zulia dan mengenepikan Saman 397. Butiran terperinci ganti rugi khas, umum dan teruk yang diberikan kepada Lim terdapat di perenggan 157 penghakiman:

(1) Berdasarkan semua keterangan, mahkamah mendapati bahawa punca Lim terjatuh di Prince Court adalah disebabkan oleh kerosakan mekanikal pada rel pelindung sisi 'katil paramount lama', menyebabkan rel terjatuh dan Lim terguling dari katil tersebut. Pernyataan Dr Nick Chong bahawa beliau telah melihat kegagalan mekanikal sedemikian berlaku berkali-kali sebelum ini yang mana tidak bercanggah dengan fakta tersebut. Walaupun terdapat masalah tersebut, Prince Court gagal memeriksa dan menggantikan katil lama yang rosak sehingga menyebabkan pesakit terjatuh seperti di dalam kes ini (lihat perenggan 75–77 & 114).

(2) Keterangan Dr Nick Chong dan Jururawat Zulia membuktikan bahawa

Lim 'terlalu lemah' secara fizikal untuk memanjat rel pengawal katil dan spacer katil dan dalam apa jua keadaan, tiada sebab untuk dia berbuat demikian (lihat perenggan 78–79, 83(h) & (i)).

(3) Inferens berbalik menurut s 114(g) Akta Keterangan 1950 dikenakan terhadap Prince Court kerana gagal: (a) memanggil saksi untuk memberi keterangan mengenai ketiadaan pendedahan laporan kejadian yang disediakan oleh jururawat yang bertugas serta semakan dalaman yang dijalankan ke atas punca kejatuhan; dan (b) memanggil pekerja di Prince Court yang membuat keputusan untuk tidak melaporkan peristiwa Lim terjatuh kepada Kementerian Kesihatan Malaysia (KKM) selaras dengan Arahan Ketua Pengarah KKM Bilangan 1 Tahun 2010 kepada semua fasiliti penjagaan kesihatan swasta untuk melaporkan sebarang insiden tidak dijangka sebaik sahaja ianya berlaku. Prince Court telah menyebabkan pembaziran masa yang tidak perlu ketika perbicaraan dengan gagal mendedahkan dua laporan penting yang sekiranya didedahkan, akan menunjukkan bahawa punca kejatuhan yang paling mungkin adalah kegagalan mekanikal bahagian katil pesakit. Kedua-dua dokumen itu ialah laporan analisis punca Prince Court dan laporan siasatannya mengenai kejadian itu. Prince Court juga telah menyalahkan Lim dan ahli keluarganya atas kejadian tersebut. Dalam suratnya kepada mereka bertarikh 26 Oktober 2018, Prince Court menyatakan bahawa 'memandangkan Lim jatuh di rumah pada hari kemasukan dan keadaan kesihatannya, ahli keluarga digalakkan untuk memasukkan ke dalam wad'. Walau bagaimanapun, dalam surat berikutnya kepada mereka bertarikh 9 Januari 2019, Prince Court menafikan sebarang pengetahuan tentang kejadian Lim terjatuh di rumah sebelum kemasukannya ke hospital itu dan menegaskan bahawa sekiranya mereka mengetahuinya 'kemasukannya akan berbeza' (lihat perenggan 21–23, 26–28, 42–43, 63 & 69).

(4) Lim gagal membuktikan kes kecuaian terhadap Jururawat Zulia. Oleh itu, tuntutan terhadapnya telah ditolak. Berdasarkan rekod perubatan dan laporan yang didedahkan semasa peringkat pra-tindakan, adalah munasabah bagi Lim untuk memasukkan Dr Nick Chong sebagai defendan. Dengan pendedahan keterangan berikutnya, termasuk dokumen semakan dalaman yang diperintahkan untuk didedahkan oleh mahkamah, adalah jelas bahawa tiada apa yang boleh dilakukan oleh Dr Nick Chong untuk mengelakkan kejadian jatuh itu. Peguam Lim dalam hujahan penutupnya, juga mengakui bahawa tiada liabiliti harus dikenakan terhadap Dr Nick Chong. Sehubungan itu, tuntutan terhadapnya ditolak dengan perintah Sanderson bahawa Prince Court bertanggungjawab untuk membayar kos yang perlu dibayar oleh Lim kepada Dr Nick Chong (lihat perenggan 84, 88, 136 & 140–141).

(5) Prince Court diperintahkan membayar ganti rugi RM1 juta kepada Lim

atas sebab-sebab berikut: (a) menyalahkan Lim atas kejatuhannya dengan mendakwa bahawa dia cuba turun dari katil dan gagal memastikan bahawa ahli keluarga hadir untuk melihat keadaannya; (b) mengalihkan kesalahan atas kejatuhan Lim kepada ahli keluarganya melalui surat bercanggah bertarikh 26 Oktober 2018 dan 9 Januari 2019. Perbuatan ini terserlah ketika pemeriksaan balas; (c) tidak mendedahkan keterangan penting secara sengaja, iaitu laporan kejadian yang disediakan oleh jururawat yang bertugas dan semakan dalaman yang dijalankan atas peristiwa tersebut. Selepas mahkamah memerintahkan dokumen-dokumen mereka didedahkan, Prince Court dengan sengaja tidak mendedahkan dokumen-dokumen lengkap; (d) menyembunyikan keterangan dan pengetahuan tentang punca kejatuhan yang menyebabkan Lim menyaman Dr Nick Chong dan Jururawat Zulia juga. Hal ini menyebabkan tekanan yang tidak perlu kepada mereka selain dari serangan terhadap reputasi profesional mereka dari masa saman itu difailkan sehingga keputusan diberikan; (e) gagal melaporkan kejatuhan itu kepada KKM dalam tempoh 24 jam atau sejurus selepas kejadian tersebut dan mengelak daripada siasatan wajib peristiwa tersebut; (f) mencabuli proses keadilan; dan (g) tidak mengambil tindakan segera untuk menggantikan katil lamanya dengan yang baru selepas mengetahui bahawa kegagalan mekanikal sisi katil pesakit tersebut adalah adalah perkara yang sering terjadi (lihat perenggan 32 & 114–119).]

Cases referred to

ABDA Air Freight Sdn Bhd v Sistem Penerbangan Malaysia Bhd [2001] 3 MLJ 641, HC (refd)

Ahmad Radhiq Arbee bin Ahmad Rejal Arbee (as a husband and dependant of Sharifah Shalihah bt Sayed Abdullah, deceased) & Ors v Kerajaan Malaysia & Ors [2020] 10 MLJ 459, HC (refd)

Dato' Stanley Isaacs (suing by himself and as the administrator of the estate of To' Puan Suzanne Thomas, deceased) v The Government of Malaysia & Ors [2019] 8 MLJ 331, HC (refd)

Dr Hari Krishnan & Anor v Megat Noor Ishak bin Megat Ibrahim & Anor and Another Appeal [2018] 3 MLJ 281; [2018] 3 CLJ 427, FC (folld)

Dr Hari Krishnan & Anor v Megat Noor Ishak bin Megat Ibrahim & Ors and another appeal [2015] MLJU 1857; [2015] 1 LNS 1476, CA (refd)

Elonita Abayon Chua v Pendakwa Raya [2018] 5 MLJ 482; [2018] MLRAU 91, CA (refd)

Farah Ahmed Naji Al-Sahhaf v Dr Lee Weng Seng & Ors [2017] MLJU 1725, HC (refd)

Marappan a/l Muthusamy v R Sivam a/l Ramasamy [2014] 4 MLJ 428, CA (refd)

Mat Jusoh bin Daud v Syarikat Jaya Seberang Takir Sdn Bhd [1982] 2 MLJ 71 (refd)

Medi-Circle Sdn Bhd v Nur Zulaikha bt Dzulzaili (suing through her father and litigation representative, Dzulzaili bin Muhammad Nor) and other appeals [2022] MLJU 1575, CA (refd)

Mirra Sdn Bhd v The Ayer Molek Rubber Company Bhd [2008] 2 MLJ 348; [2008] 3 AMR 381, CA (refd)

Muhammad Zulkarnain bin Mohamed Rokani (a child suing through his representative, Mohamed Rokani bin Mokmin) & Ors v Pengarah Hospital Sultan Ismail Johor Bahru & Ors [2021] 8 MLJ 762, HC (refd)

Rahbar Yadollah Fathi v PP [2020] 2 MLJ 737, CA (refd)

Robshaw (A Child) v United Lincolnshire Hospitals NHS Trust [2015] All ER (D) 21 (Apr); [2015] EWHC 923 (QB), QB (refd)

Rohgetana a/p Mayathevan (an infant suing through his father and litigation representative, Mayathevan a/l Mayandi) v Dr Navin Kumar & Ors and other appeals [2017] 4 MLJ 102, CA (refd)

Sabah Shell Petroleum Co Ltd & Anor v The Owners of and/or Any Other Persons Interested in the Ship or Vessel the 'Borcos Takdir' [2012] 5 MLJ 515, HC (refd)

Sanderson v Blyth Theatre Company [1903] 2 KB 533, CA (refd)

Shamugasundram a/l Perumal v PP and other appeals [2023] MLJU 322; [2023] MLRAU 43, CA (refd)

Legislation referred to

Civil Law Act 1956 s 11

Evidence Act 1950 ss 3, 114, 114(g), 165, 165(i), (ii)

Mental Health Act 2001

Rules of Court 2012 O 42 rr 12, 12A, O 76 r 12

Traditional and Complementary Medicine Act 2016

Karthi Kanthabalan (with Desmond Mun and Teeloshini Baboo) (PS Ranjan & Co) in Civil Suit No WA-23NCvC-70–12 of 2019 for the plaintiff.

Mishand Pathmanathan (Kandiah Partnership) in Civil Suit No WA-22NCvC-397–05 of 2021 for the plaintiff.

Sharmini Navaratnam (with Nabilah Farhanah bt Moktar Daidi) (Siva Dharma & Assoc) in Civil Suit No WA-23NCvC-70–12 of 2019 for the first and third defendants.

Raja Eileen Soraya bt Raja Aman (with Michelle Khor) (Raja, Darryl & Loh) in Civil Suit No WA-23NCvC-70–12 of 2019 for the second defendant.

Karthi Kanthabalan (with Desmond Mun and Teeloshini Baboo) (PS Ranjan & Co) Civil Suit No WA-22NCvC-397–05 of 2021 for the defendants.

Leong Wai Hong JC:

SOME OBSERVATIONS ON THE ETHICS OF MEDICAL NEGLIGENCE LITIGATION

[1] A suit against a doctor and a hospital for medical negligence is a serious matter. It is time consuming and expensive, not to mention emotionally draining for a patient, his family and the doctor concerned. Therefore, a suit should only be filed after counsel has obtained an opinion from an expert which opines that prima facie there is negligence.

[2] As for the doctor and hospital concerned, they should work closely with counsel appointed by insurers to defend the suit as reputational damage will occur if a clear-cut case of negligence is allowed to play out in court with the resulting adverse publicity generated. A clear-cut case of negligence should be settled amicably and can be settled without an admission of liability. The courts will award aggravated damages if the doctor and hospital refuse to admit liability in clear-cut cases and instead file a defence which causes the matter to be set down for a protracted trial.

INTRODUCTION

[3] The trial before me took a total of 18 days. It arose out of a fall of a 75-year-old lady ('the patient') while undergoing treatment in 2018 for dengue in Prince Court Medical Centre Sdn Bhd in Kuala Lumpur ('Prince Court Medical Centre'). The patient had fallen out of her hospital bed. Due to the fall she suffered severe brain damage.

[4] The great question that consumed the trial was, why did the patient fall? It was to use a famous quote of Winston Churchill, a riddle, wrapped in a mystery, inside an enigma which mystified the witnesses who testified and counsel until day 15 of the trial on 26 April 2024 when the patient's physician Dr Nick Chong Chung King/the second defendant ('Dr Nick Chong') testified that the patient could have fallen due to a mechanical failure of the cot side. Dr Nick Chong also testified on the existence of incident reports prepared by the nurses on duty and an internal nursing review conducted after the fall which were not produced by Prince Court Medical Centre for trial.

(See encl 164 Dr Nick Chong's supplementary witness statement Q and A 4 and encl 184 notes of proceedings *Jld* 4/4 at p 1105 lines 5–15.)

[5] It is the patient's case (through her son as litigation representative) that 'the true reason for the fall was intentionally suppressed by Prince Court

Medical Centre and its' solicitors' (see encl 196 plaintiff's written submissions para 6).

[6] Two suits were heard together before me. They are:

(a) Suit WA-23NCvC-70–12 of 2019 ('Suit 70') — the action in medical negligence by Madam Lim Yoke Har/the plaintiff/patient against Prince Court Medical Centre/the first defendant, Dr Nick Chong/the second defendant and Staff Nurse Zulia Rashila Md Shafar/the third defendant ('Nurse Zulia'); and

(b) Suit WA-22NCVC-397–05 of 2021 ('Suit 397') — the action for recovery of the outstanding hospital bills by Prince Court Medical Centre against the patient and three of her children who were the guarantors for the hospital bill.

[7] As regards Suit 397, counsel for the patient and her children Mr Karthi Kanthabalan had conceded that they are not disputing the outstanding sum but only the liability to pay it. He contends they are only liable to pay for the hospital bill for the dengue treatment. All expenses which were incurred after the fall must be borne by Prince Court Medical Centre. The said concession was recorded in court on 31 October 2023 (see encl 181 of the notes of proceedings pp 158–159).

[8] The trial was heard over 18 days spanning three years before a few judges. I took over the trial on 31 October 2023 and completed the hearing of witnesses on 27 May 2024. Oral submissions by counsel were held before me on 22 August 2024, 23 August 2024 and 26 August 2024.

[9] On 27 August 2024, I delivered decision in favour of the patient for both Suits 70 and 397. Prince Court Medical Centre has filed an appeal for Suit 397 to the Court of Appeal dated 23 September 2024.

[10] Prince Court Medical Centre has also filed an appeal for Suit 70 to the Court of Appeal dated 24 September 2024. This appeal is stated as against liability and quantum. I should mention that a majority of the quantum items were agreed by consent.

[11] These are my grounds of decision for both suits. The issues which I shall address are:

(a) why did the patient fall? Are Prince Court Medical Centre, Dr Nick Chong and Nurse Zulia liable for negligence?

(b) quantum;

(c) what are the damages for pain and suffering and loss of amenities of life?

(d) is the patient entitled to aggravated damages?

(e) is the patient entitled to interest at 4% or 5% or 8%? and

(f) is the plaintiff entitled to ask for a Sanderson order?

MATERIAL BACKGROUND FACTS

Admission to Prince Court Medical Centre for treatment

[12] On 19 September 2018 at around 10.30pm, the patient who was 75 years old at the time suffered a fall at home and was brought to Prince Court Medical Centre for treatment. On the way to Prince Court Medical Centre the patient's son (PW2 — Mr Goh Seng Cha) had contacted Dr Shamim Ramasamy, the patient's former treating doctor, and informed her of the fall. At Prince Court Medical Centre, the patient was referred to Dr Nick Chong because Dr Shamim was not available to attend to her. The patient was diagnosed with dengue fever. She was identified as a patient with a high risk of falling under the Morse fall risk scale. The Morse fall risk scale is a scale used to predict a patient's likelihood of falling by evaluating individual risk factors.

(See: encl 38 *ikatan dokumen bersama* (*Bah* B) *Jld* 4/9 Bundle B4 p 1107 Morse fall risk scale dated 19 September 2018 and encl 39 *ikatan dokumen bersama* (*Bah* B) *Jld* 5/9 Bundle B5 p 1122 Morse fall risk scale dated 19 September 2018.)

[13] On the same day 19 September 2018, the patient was seen by Dr Nick Chong and was prescribed with amongst others 10mg of the drug Zolpidem (also known as Stilnox), a sleeping aid on a *pro re nata* (PRN) (meaning as required) basis. the patient continued to receive Zolpidem/Stilnox every night.

(See: encl 73 *ikatan dokumen bersama* (*Bah* B) No 2 *Jld* 1/3 Bundle B12 pp 4, 8, 11, 14, 16, 19, 22 medication administration records (MAR).)

The fall

[14] The patient was recovering well from her dengue infection and was due to be discharged on 26 September 2018.

[15] On 26 September 2018, at around 2am Nurse Zulia attended to the patient and recorded in her nursing report 'Assis patient to sit up as patient request. Positioning done ... Cord side all up. Call bell within reachable. Bed spacer applied'. Nurse Zulia later amended her nursing report to read 'Assis patient to sit up as patient request. Positioning done. *Position patient back to*

supine. Cord side all up. Call bell within reachable. Bed spacer applied'. The words added are in italics.

(See: encl 39 *ikatan dokumen bersama* (*Bah* B) *Jld* 5/9 Bundle B5 p 1422 amended nursing report and p 1424 for the original unamended nursing report.)

[16] Five minutes later, at 2.05am, the patient screamed and was found lying on the floor. This is what Nurse Zulia recorded in her nursing report — '*Heard patient screaming while at nurse counter, Found patient fall lying on the floor*. Laceration wound seen over the head. Active bleeding seen ...'. This recording was not amended by Nurse Zulia in her amended nursing report. (Emphasis added.)

(See: encl 39 *ikatan dokumen bersama* (*Bah* B) *Jld* 5/9 Bundle B5 pp 1422 amended nursing report and p 1424 for the original unamended nursing report.)

[17] A layout plan of the patient's room and where she was found on the floor can be seen as attachment A of Nurse Zulia's DW5 witness statement in encl 65. Attachment B1 shows the location of the call bell and B2 shows the location of the bed spacer and cot side/bed rails/*pagar katil*.

[18] At 2.15am, Medical Officer Dr Thines attended to the patient.

(See: encl 39 *ikatan dokumen bersama* (*Bah* B) *Jld* 5/9 Bundle B5 p 1422 amended nursing report.)

[19] A computerised tomography (CT) scan was done which revealed a right-sided intracerebral bleed and the patient was transferred to the Intensive Care Unit (ICU) for close monitoring.

(See: encl 39 *ikatan dokumen bersama* (*Bah* B) *Jld* 5/9 Bundle B5 p 1422 amended nursing report and encl 37 *ikatan dokumen bersama* (*Bah* B) *Jld* 3/9 Bundle B3 p 589 physician progress note.)

[20] On 27 September 2018, the patient underwent a craniotomy with an evacuation of the haematoma in the brain undertaken by consultant neurosurgeon Dato' Dr Jagdeep Singh Nanra.

(See: encl 37 *ikatan dokumen bersama* (*Bah* B) *Jld* 3/9 Bundle B3 p 609 general operative note.)

[21] Prince Court Medical Centre failed to report the fall to the Ministry of Health as required by law.

[22] Counsel for the patient submits that the duty to report is contained in the Director General Directive No 1 of 2010 dated 13 December 2010 issued by the Ministry of Health which came into effect on 1 January 2011 ('MOH Director General Directive No 1 of 2010'). A

[23] This directive has an attachment 1 which is titled 'Manual on Incident Reporting dated December 2012'. It requires all private healthcare facilities to report an unforeseeable incident or unanticipated incident 'the next working day after the incident occurred or immediately after the time the private healthcare facility has reasonable cause to believe that the incident occurred'. B C

[24] It would appear from the MOH website that there is a version 2.0 of the incident reporting guideline titled 'Guidelines on Implementation — Incident Reporting and Learning System 2.0 for Ministry of Health Hospitals First Edition 2017 dated 2017'. It is unclear if this version 2.0 is also applicable to all private healthcare facilities in Malaysia. D

Shifting blame onto the patient and her family

[25] Understandably the patient's family was very upset and sought explanations from Prince Court Medical Centre and Dr Nick Chong. From their (PW2 and PW3) testimonies it is clear they love their mom. They had entrusted their mom to Prince Court Medical Centre and Dr Nick Chong for the best treatment that money can buy. Prior to their mom checking in for dengue treatment she was enjoying life as a senior citizen but now laid in bed in 'a persistent vegetative state' not able to talk or recognise anyone (see witness statement of Goh Seng Cha PW2 encl 60 Q and A 22 and 24). E F

[26] On 26 October 2018, Prince Court Medical Centre wrote to the patient's family to shift the blame to them for her fall. Prince Court Medical Centre referred to the patient's fall at home, before the admission. This is what they said: G

> In view of Mdm Lim's fall at home on her admission day and her general health condition, family members were encouraged to room in with her.

(See: encl 47 *ikatan dokumen bersama* (*Bah* B) Bundle B11 p 58.) H

[27] From this letter, it is clear that Prince Court Medical Centre was well aware that the patient had suffered a fall at home prior to her admission to Prince Court Medical Centre. I

[28] However, in a subsequent letter to the family dated 9 January 2019, they denied any knowledge of the fall at home. They also stated in the letter that Prince Court Medical Centre or the doctors cannot be blamed for the fall

because 'we regret to note that the hospital or the doctors were not informed by family members that the patient has had fall or falls at home just prior to her admission to Prince Court Medical Centre for dengue. This fact was only informed after the incident':

> However, we regret to note that the hospital or the doctors were not informed by family members that the patient has had fall or falls at home just prior to her admission to Prince Court Medical Centre for dengue. This fact was only informed after the incident. If it was made known to the Hospital or the Doctor that she had a fall or falls at home just prior to admission, her admission would have been different.

(See: encl 47 *ikatan dokumen bersama* (*Bah* B) Bundle B11 p 61.)

[29] I will elaborate more on these facts when I put up my reasons why I awarded aggravated damages to the patient.

Discharged in 'a persistent vegetative state'

[30] On 20 December 2018 the patient was discharged from Prince Court Medical Centre. She is in 'a persistent vegetative state' but has improved to a minimally conscious state sometime later and remains the same to this day.

(See: encl 38 *ikatan dokumen bersama* (*Bah* B) *Jld* 4/9 Bundle B4 p 1091 and plaintiff's expert affidavit dated 11 November 2021 enclosing export report dated 6 June 2021 of quantum expert consultant rehabilitation physician Dr Akmal Hafizah bt Zamli (PW4) in encl 90 *afidavit saksi pakar plaintif* B22 p 14 para H.)

COURT PLEADINGS AND SUBMISSIONS

The contentions of the patient

[31] The patient in her statement of claim blames all the three defendants for her fall. However, after the completion of testimonies by the witnesses, the plaintiff's counsel in his closing submissions now says Prince Court Medical Centre 'is solely liable for the fall' and that Dr Nick Chong 'could not be blamed for the fall' (see encl 196 plaintiff's written submissions paras 3–4).

The contentions of Prince Court Medical Centre

[32] Prince Court Medical Centre contends that there was no negligence on its part. Prince Court Medical Centre blames the patient for attempting to dismount from the bed which caused her fall and, inter alia, failed to ensure a family member was present to attend to her (see encl 31 summary of case of first and third defendant at paras 13–14).

[33] It is significant that there is no allegation in the summary of case of the first and third defendant that Dr Nick Chong was liable solely or partly for the fall.

[34] However, at the closing submissions stage it was suggested that Dr Nick Chong could have caused the fall by prescribing a combination of tramadol and stilnox medication to the patient (see encl 193 first and third defendant written submissions p 27 paras 1–4 and p 35 para 1).

The contentions of Dr Nick Chong

[35] Dr Nick Chong denies any negligence on his part (see encl 22 second defendant's summary of case at paras 26–27).

THE TRIAL PROCESS

[36] The patient called four witnesses. They are:

(a) the liability expert consultant emergency physician Professor Dr Mohd Idzwan bin Zakaria (PW1);

(b) the son Mr Goh Seng Cha (PW2);

(c) the son Mr Goh Seng Chin (PW3); and

(d) the quantum expert consultant rehabilitation physician Dr Akmal Hafizah bt Zamli (PW4).

[37] Prince Court Medical Centre and Nurse Zulia called nine witnesses. They are:

(a) the customer service manager Ms Jennie Wong Kean Mooi (DW1);

(b) the liability expert in nursing Ms Katherine Tan Siew Hoon (DW2);

(c) the medical officer Dr Thines Muthusamy (DW3);

(d) the head nurse Ms Norzila bt Abdul Ghani (DW4);

(e) the third defendant Ms Zulia Rashila bt Md Shafar (DW5);

(f) the nurse Ms Fatehah Irma bt Mohamad Anuar (DW6);

(g) the quantum expert consultant rehabilitation physician Dr Thevaraj a/l Ponnudurai (DW7);

(h) the Chief Executive Officer Mr Mahenthiran Thanapal (DW8); and

(i) the senior clinical, quality and risk management executive Ms Puspa a/p Tharmalingam (DW10).

[38] Dr Nick Chong testified in his own defence as DW9 and also called two witnesses. They are:

(a) the liability expert consultant internal medicine physician and nephrologist Dr Tan Li Ping (DW11); and

(b) the treating nephrologist Professor Datuk Dr Tan Si Yen (DW12).

THE ISSUES TO BE TRIED

[39] I now consider the issues that I have set out earlier above.

Why did the patient fall? Are Prince Court Medical Centre, Dr Nick Chong and Nurse Zulia liable for negligence?

[40] Nurse Zulia has testified that it would have been very difficult, if not impossible, for the patient herself to have climbed over the cot side (see Nurse Zulia DW5 notes of proceedings encl 183 at pp 1014–1016 and 1019). Her testimony disproves Prince Court Medical Centre's contention that the patient herself caused her fall by climbing out of bed.

[41] So why did the patient fall off her bed?

Non-disclosure of two important reports on the fall

[42] I find that much time was taken at trial and in my view wasted unnecessarily because Prince Court Medical Centre did not disclose two important reports on the fall. As it transpired, these two reports show that the most likely cause of the fall was a mechanical failure of the bed's cot side.

[43] The patient's liability expert consultant emergency physician Professor Dr Mohd Idzwan bin Zakaria (PW1) in his report encl 91 *afidavit saksi pakar plaintif* B 21 at p 6 had said the root cause analysis report from Prince Court Medical Centre and Prince Court Medical Centre's inquiry report on the incident are crucial documents to evaluate the incident fairly:

> *I … was not given the opportunity to review the documents as below* which would have tremendously to evaluate the incident fairly.
>
> – Root cause analysis report from PCMC
>
> – PCMC's inquiry report on the incident (Emphasis added.)

[44] Dr Nick Chong indeed testified on the existence of incident reports prepared by the nurses on duty and an internal nursing review conducted after the fall which were not produced by Prince Court Medical Centre for trial. This is what he said:

4. Q: *During the course of the trial, there was mention that incident reports were prepared by the nurses on duty and, an internal nursing review was conducted following the fall incident on the night of 26.9.2018. Were you given copies of these reports?*

A: I was not involved in any internal nursing review *nor was I given any documents or information pertaining to the internal nursing review*. I was also not involved in any preparation of the incident reports. I do not have in my possession any reports prepared by the nurses who were on duty on the night of the incident. (Emphasis added.)

(See encl 164 Dr Nick Chong's supplementary WS Q and A 4.)

[45] Dr Nick Chong testified under cross-examination on 26 April 2024 that the patient could have fallen due to a mechanical failure of the cot side. His testimony is shocking to say the least. He testified:

... *the cot side when it's put up can suffer mechanical failure. I have seen it many times before that is you lean on the cot side, I was doing my ward round, the whole thing just gave way*. That's a possibility as well, it's *a common problem*. (Emphasis added.)

(Enclosure 184 Jld 4/4 notes of proceedings p 1097.)

Court: ... let me ask a simple question. Doctor, in your opinion, how did the patient fall?

...

DW9: In my opinion, I mean there are several possibilities ...

Court: What are those possibilities?

DW9: One is perhaps the cot side was put up but it wasn't secured properly and it fell back down and the patient managed to get out of it. *The second possibility is, sometimes the cot side when it's put up can suffer mechanical failure. I have seen it many times before that is you lean on the cot side, I was doing my ward round, the whole thing just gave way*. That's a possibility as well, it's *a common problem*.

(Enclosure 184 notes of proceedings p 1101.)

KK: ... I am saying, Doctor, that there was a real possibility because as you've accepted, these two drugs can interact, there was an interaction and the patient could have ... if all precautions were taken, that means the nurses had got the cot side up, there was no mechanical failure, there was bed spacers and yet the patient jumped over and fell and it can only be because of these drugs?

DW9: *No, the patient cannot jump over*.

(Enclosure 184 notes of proceedings p 1105.)

KK: Doctor, you also know that right after the incident, you were not there, within 2 one day, *within 24 hours of the fall, there was an incident report that was prepared by the nurses who were involved. Are you aware?*

DW9: *I'm aware the nurses did an incident report*. I'm not sure the time frame.

...

KK: *Now Doctor, certainly that would have been an important piece of evidence as to what happened that morning, correct?*

DW9: Yes. (Emphasis added.)

Section 165 of the Evidence Act 1950 (Act 56) ('the EA')

[46] Arising from the testimony of Dr Nick Chong on 26 April 2024 and the comments by the plaintiff's liability expert consultant emergency physician Professor Dr Mohd Idzwan bin Zakaria (PW1) in his report encl 91 B 21 at p 6, I invoked s 165 of the EA to order Prince Court Medical Centre to produce through a witness the following documents:

(a) the incident reports prepared by the nurses on duty; and

(b) the documents pertaining to the internal nursing review conducted into the fall.

[47] Section 165 of the EA reads as follows:

165 Judge's power to put questions or order production.

The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any format any time, of any witness or of the parties, about any fact relevant or irrelevant; and *may order the production of any document* or thing; *and neither the parties nor their agents shall be entitled to make any objection to any such* question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that —

(i) the judgment must be based upon facts declared by this Act to be relevant and duly proved;

(ii) *this section shall not authorize any Judge to compel any witness* to answer any question or *to produce any document which the witness would be entitled to refuse to answer or produce under sections 121 to 131* if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with the primary evidence of any document, except in the cases hereinbefore excepted. (Emphasis added.)

[48] The ambit of s 165 of the EA has been well set out in *Shamugasundram a/l Perumal v Public Prosecutor and other appeals* [2023] MLJU 322; [2023] MLRAU 43 per Nordin Hassan JCA, *Rahbar Yadollah Fathi v Public Prosecutor* [2020] 2 MLJ 737 CA per Mohamad Zabidin JCA, and in *Elonita Abayon Chua v Pendakwa Raya* [2018] 5 MLJ 482; [2018] MLRAU 91 per Mohd Zawawi JCA.

[49] Though these are criminal cases, the principles laid down are equally applicable to civil cases (see *Muhammad Zulkarnain bin Mohamed Rokani (a child suing through his representative, Mohamed Rokani bin Mokmin) & Ors v Pengarah Hospital Sultan Ismail Johor Bahru & Ors* [2021] 8 MLJ 762 (HC) at [42]).

[50] The principles that can be distilled from these cases are as follows:

(a) s 165 of the EA clearly empowers a judge to ask any witness, any question, in any form, and at any time and order the production of any document. No objection can be made by any parties about the question asked or the order to produce the document. Any cross-examination on the question asked must be with the leave of the court. The wide discretionary power of the judge is only limited by the provisos (i) and (ii) in s 165 of the EA;

(b) a judge has the responsibility to take the initiative, when and in an appropriate way, to raise matters that can clearly help the court to make a fair decision. A judge should not act as a 'mere recording machine' and/or 'silent spectator';

(c) a judge should not intervene in the proceedings to such an extent that it prevents a party from presenting its case. As long as a party is able to present its case a judge cannot be said to have caused prejudice to that party or have descended into the arena; and

(d) the judge is entitled under s 165 of the EA to ask questions during the trial as long as any answer given by the witness to the question by the trial judge could be re-examined by his counsel and counsel was not denied the opportunity to put any question to the witness.

[51] In *Rahbar Yadollah Fathi v Public Prosecutor* [2020] 2 MLJ 737 (CA), the Court of Appeal held that the trial judge is entitled under s 165 of the EA to ask questions during the trial as long as any answer given by the witness to the question by the trial judge could be re-examined by his counsel and counsel was not denied the opportunity to put any question to the witness. Mohamad Zabidin JCA said:

> [28] Coming back to this case, *bearing in mind the wide power vested on the trial judge by s 165 of the Evidence Act*, and the principle as stated in *Mohammed Ali bin Johari v Public Prosecutor*, *we are of the considered view that the 'intervention' by the learned trial judge by asking questions during the trial does not amount to His Lordship taking over the prosecution*. The questions posed were merely for clarification which the trial judge was allowed to do under s 165 of the Evidence Act. *The appellant was represented by counsel during trial. Any answer given by witness to the question by the trial judge could be re-examined by the counsel. There is nothing on record to suggest that the counsel was denied the opportunity to put any question to the witness*. As such we find the first issue raised by learned counsel has no merit. (Emphasis added.)

[52] In *Shamugasundram a/l Perumal v Public Prosecutor and other appeals* [2023] MLJU 322; [2023] MLRAU 43, Nordin Hassan JCA said:

> [76] This court had the opportunity to address the same issue and the application of s 165 in the case of *Elonita Abayon Chua v Pendakwaraya* [2018] 5 MLJ 482; [2018] MLRAU 91 where Mohd Zawawi JCA (as he then was) explained as follows:
>
> > [27] Sesungguhnya adalah menjadi kewajipan seseorang hakim yang mendengar kes-kes jenayah untuk mempertahankan kedua-dua hak, iaitu hak-hak tertuduh dan awam ('public') demi menegakkan integriti pentadbiran keadilan jenayah. Dalam prosiding yang dijalankan berdasarkan sistem bertentangan ('adversarial system') seperti yang diamalkan oleh mahkamah-mahkamah di Malaysia, *seseorang hakim tidak terlepas dari tanggungjawab untuk mengambil inisiatif, pada ketika dan dengan cara yang sesuai, bagi menimbulkan perkara-perkara yang secara nyata boleh membantu mahkamah membuat keputusan yang adil. … adalah tidak wajar seseorang hakim hanya bertindak sebagai 'mere recording machine' dan/atau 'silent spectator'.*
> >
> > [28] *Terdapat alasan-alasan kukuh mengapa seseorang hakim yang mendengar kes-kes jenayah perlu dan patut, dalam sempadan dan batasan yang dibenarkan undang-undang, untuk campur tangan (intervene) dengan membuat ulasan yang sesuai, memberi arahan arahan tertentu kepada pihak-pihak dan saksi-saksi dan bertanyakan soalan-soalan yang relevan dan penting, demi mencapai keadilan*. Antara alasan-alasan tersebut ialah:
> >
> > (a) untuk membolehkan pihak-pihak memfokuskan pengemukaan keterangan terhadap perkara-perkara penting yang menjadi intipati pertuduhan;
> >
> > (b) untuk mendapatkan penjelasan mengenai aspek-aspek tertentu keterangan yang diberikan oleh saksi-saksi;
> >
> > (c) untuk mengelakkan keterangan yang tidak relevan dan berulang ('irrelevant and repetitive evidence'); dan
> >
> > (d) untuk memastikan cara seseorang saksi memberi keterangan tidak menggugat kelancaran perbicaraan.
> >
> > [29] Walau bagaimanapun, adalah penting untuk diambil perhatian bahawa *memandangkan sesuatu perbicaraan jenayah di negara kita adalah suatu proses penentangan ('adversarial process') antara pihak pendakwaan dan pembelaan, dan bukan suatu penyiasatan oleh hakim, pemeriksaan utama dan pemeriksaan balas, sebahagian besarnya, adalah menjadi tanggungjawab dan tugas timbalan pendakwa raya dan peguambela*. (Emphasis added.)
>
> [77] … on the application of s 165, reference was made to *Sarkar, Law of Evidence* (Vol 2) p 2885 which states this:
>
> > [32] … Section 165 of the Evidence Act confers vast and unrestricted powers on the trial Court to put 'any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact 'relevant or irrelevant' in order to discover relevant facts. The said section was framed by lavishly studding it with

the word 'any' which could only have been inspired by the legislative intent to confer unbridled power on the trial Court to use the power whenever he deems it necessary to elicit truth. Even if any such question crossed into irrelevancy the same would not transgress beyond the contours of powers of the Court. This is clear from the words 'relevant or irrelevant' in s 165. Neither of the parties has any right to raise objection to any such question. *The powers of the presiding judge of the trial court under s 165 are unbridled and the Court can put any question to any witness at any stage so that evidence is not obscene but is clear on the relevant point* ...

Dan di ms 2887:

> *Reticence may be good in many circumstances, but a judge remaining mute during trial is not an ideal situation*. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be about or combat between two rival sides with the judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. *A judge is expected to actively participate in the trial, elicits necessary, materials from witnesses at the appropriate context which he feels necessary for reaching the correct conclusion*. There is nothing, which inhibits his power to put questions to the witnesses, either during chief examination or cross examination or even during re-examination to elicit truth. The corollary of it is that if a judge felt that a witness has committed an error or a slip it is the duty of the judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence collecting process. It is a useful exercise for trial judge to remain active and alert so that errors can be minimized ... (Emphasis added.)

...

[80] In Singapore court, the issue of extensive judicial interference has also been addressed and the main consideration is whether the intervention has resulted in actual prejudice against the accused. *One of the instances of actual prejudice is that the interference has prevented a party from presenting its case*.

[81] In *Muhammad Nabil bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 at p 1037 Sundaresh Menon CJ said this:

> 166 Thus, for excessive judicial interference to be established, it would generally be necessary to show that the situation was 'an egregious one' (see *Mohammed Ali* at [175(g)]). Plainly, where a complaint of excessive judicial interference is made on appeal, the appellate court will consider whether the court below has in fact acted in a manner that has resulted in actual prejudice to the relevant party; the relevant inquiry is not whether a fair-minded person would reasonably suspect or apprehend that the court below was biased ... *Actual prejudice could, for instance, arise if a judge intervenes in the proceedings to such extent that it prevents a party from presenting its case*. (Emphasis added.)

A [82] In the present case, having assessed the questions asked by the trial judge to witnesses during the trial as highlighted by counsel for the first accused, we are of the considered view that apart from the questions were for clarification on certain issues, the questions also were asked to elicit materials from witnesses for the trial judge to make a correct and just decision. Further, the questions were not in the
B foRMof interrogative or investigative nature nor the witnesses had to succumb to any suggestion by the trial judge. (Emphasis added.)

Production of the two documents by Prince Court Medical Centre

C **[53]** On 30 April 2024, Prince Court Medical Centre produced the two documents as contained in encl 166 *ikatan dokumen defendan pertama dan defendan ketiga* (2) Bundle B29. Prince Court Medical Centre titled the two documents as:

D (a) incident report dated 26 September 2018 pp 1–3; and

(b) PCMC nursing team review pp 4–12.

Incomplete or edited or 'Cooked Up' internal nursing review

E **[54]** In respect to the two documents produced, counsel for the plaintiff contends that (see encl 196 plaintiff's written submissions):

6. ...There has been a clear contempt of the Order given on 26 April 2024 by this Court namely, their *refusal to disclose the complete 'internal nursing review'. What was disclosed was an edited, untitled, undated, unpaginated and unsigned 'chronology'*.
F Prince Court's officer from the Quality Assurance unit Ms Puspa a/p Tharmalingam (DW10) who tendered it in Court, had no personal knowledge of the document but referred to it as a 'slides presentation' which was prepared for Prince Court's management.

G 7. Worst still, when asked why the version of the 'slides', which were filed in Court contained no slide numbers, Ms Puspa (DW10) admitted that the slide numbers should have been there but she was not the person who printed it out. She pointed the finger at leading learned counsel for Prince Court, Ms Sharmini Navaratnam, as the person who had printed it out and disclosed it to Court. No explanation has
H come from any other witness or from Ms Navaratnam as to why an edited version was disclosed.

8. The slide numbers, if disclosed, will easily tell this Court as to whether all the slides have been disclosed or only some of them have been disclosed. *It was obvious from Ms Puspa's evidence and also from every other witness who had testified thereafter, that the 'internal nursing review' which Prince Court had disclosed was not and can*
I *never be referred to as an internal nursing review document*. (Emphasis added.)

[55] Counsel for the plaintiff further contends that the internal nursing review 'document' was either incomplete and/or edited or completely 'cooked up' for the following reasons (see encl 196 plaintiff's written submissions para [36]):

(a) that the document did not state the 'root cause' of the patient's fall despite it being the purpose of such review;

(b) that the document was not dated;

(c) that the document was not paginated;

(d) that the date on which the nursing review was conducted was not stated;

(e) that the names of the participants of the nursing review were not stated;

(f) that Ms Puspa (DW10) who produced the document had no personal knowledge of the document as she was not involved in the review at the material time;

(g) that Ms Puspa (DW10) testified that the said document was in fact 'slides' which were prepared for a presentation to Prince Court's management;

(h) that it was unclear as to what the document actually was; and

(i) that it was unclear as to who prepared (or edited) the said document.

[56] There is much force in the contention of learned counsel for the patient. Ms Puspa (DW10) from Prince Court who had testified on the internal nursing review documents had candidly admitted that an internal nursing review must include a root cause analysis and finding. Dr Nick Chong's expert consultant physician Dr Tan Li Ping (DW11) in fact testified to the same.

Cross-examination of DW10, Miss Puspa a/p Tharmalingam by counsel for the plaintiff, Mr Karthi Kanthabalan ('KK') at encl 184 *Jld* 4/4 notes of proceedings p 1173:

> KK: One of the most important purpose of a review of an incident like this is to find out the root cause, correct?
>
> DW10: Agree.
>
> KK: The review will not conclude unless and until a cause is identified, correct?
>
> DW10: Correct.

Re-examination of DW11, Dr Tan Li Ping by counsel for the second defendant, Raja Eileen Soraya bt Raja Aman ('RES') at encl 184 *Jld* 4/4 the notes of proceedings p 1301:

> Court: So what else is missing? Would you know from your normal typical review, other than what you said, the summary?

DW11: Generally there's some attempt at doing an RCA, a root cause.

KK: My Lord, this witness mentioned there should be an RCA. Can he explain that, it's an abbreviation I believe?

DW11: RCA is a Root Cause Analysis.

Court: Root cause analysis, meaning what?

DW11: So there should be an attempt by the team to list the various factors that were at play that resulted in the eventual event.

[57] Ms Puspa (DW10) conceded that an internal nursing review cannot conclude before the root cause of an incident had been identified.

Cross-examination of DW10, Miss Puspa a/p Tharmalingam by counsel for the plaintiff, Mr Karthi Kanthabalan ('KK') at encl 184 *Jld* 4/4 the notes of proceedings p 1174:

KK: Madam, not you, *what did the review committee conclude in this case as the root cause of the fall?*

DW10: *No conclusion*.

KK: Madam, I just asked you earlier, a meeting like that cannot conclude and until and unless a cause is found, correct?

DW10: *Correct*.

[58] When confronted about the lack of details, including the names of attendees in the internal nursing review document, Ms Puspa was economical with the truth.

Cross-examination of DW10, Miss Puspa a/p Tharmalingam by counsel for the plaintiff, Mr Karthi Kanthabalan ('KK') at encl 184 *Jld* 4/4 the notes of proceedings p 1177:

KK: And all you've given us was a chronology, which is a summary of the medical records. Madam, from pp 4 to 12, can you tell the Court who was involved in this review committee? Who are the persons who interviewed the nurses, who studied the records, who checked the protocols to see whether the protocols were fulfilled and concluded that they could not find a root cause for this fall? Where is it, Madam? Where is the details of the nurses or nursing manager or whoever who undertook these review meetings, the details of the people who were interviewed for this review and their conclusion that they cannot find any root cause for this patient's fall on 26.09.2018? *Where is it? It's not here, right?*

DW10: It's not here, yes.

KK: But it's somewhere in Prince Court, correct?

DW10: No.

No pagination

[59] The internal nursing review document was not paginated. When confronted about there being no page numbers in the document, Ms Puspa attempted to justify it by attributing the blame to the previous 'very limited system'.

Cross-examination of DW10, Miss Puspa a/p Tharmalingam by counsel for the plaintiff, Mr Karthi Kanthabalan ('KK') at encl 184 *Jld* 4/4 the notes of proceedings pp 1183, 1184 and 1187:

> KK: Now, you notice, Madam, *it's printed on 28.12.2021. Why Madam?*
>
> DW10: This was the previous system, the system which has limited information to show us when we print out or when we enter. This was the previous system. So after we have migrated with ... (unintelligible) ... so we have another system, so that's where we see the full details on the entry date, entry time, printing date, printing time, review date and review time, so the details is there. So this is a very limited system that we had ...
>
> KK: So, 1 to 3 is limited and 4 to 12 is what, ultra limited is it? You look at 4 to 12, no incident report ID given, no page numbers, it doesn't even tell us how many pages are in total, at least page 1 to 3 says page 1 of 2, 1 of 3, 2 of 3 and 3 of 3. Pages 4 to 12, *you had deliberately not even given page numbers?*
>
> DW10: This is prepared for the review, chronologically ...
>
> KK: Yes, there will be a page number, right? Are you telling me you prepare documents in Quality and Assurance in a premier hospital like Prince Court without giving page numbers? Is that your evidence?
>
> KK: You know, right, *when you print out PowerPoint slides, it will mention at the bottom how many pages, right?*
>
> DW10: Yes.
>
> KK: *But you all printed it out in such a way that none of the page numbers are there, correct?*
>
> DW10: *I didn't print this, so I am not sure why the number did not come into this*.

[60] When pressed during cross-examination about the absence of pagination, Ms Puspa admitted that the documents should have been paginated but was unsure as to why Prince Court Medical Centre's solicitors printed it out in such a way that the slide numbers were obscured.

Cross-examination of DW10, Miss Puspa a/p Tharmalingam by counsel for the plaintiff, Mr Karthi Kanthabalan ('KK') at encl 184 *Jld* 4/4 the notes of proceedings pp 1187 to 1189:

> KK: You didn't do it but I'm telling you, *if it was properly printed from the system, it should have page numbers, can you agree on that?*
>
> DW10: *Agree* ...
>
> DW10: We provided in a softcopy, I'm not sure why it's not ... there's no number

KK: Madam, I'm trying to understand, that means you provided this softcopy to who?

DW10: To Miss Sharmini.

KK: So when you sent it, it had page numbers, correct, because the PowerPoint slide will have page numbers, slide numbers, correct?

DW10: *I didn't send that, so I didn't see*.

KK: So whoever who sent it from Prince Court's Quality and Assurance, if it was sent as PDF, it will have slide numbers, correct?

DW10: Yes.

KK: *But the way it's printed out and presented to Court in this bundle does not carry that slide numbers, correct?*

DW10: *Yes*.

Cross-examination of DW10, Miss Puspa a/p Tharmalingam by counsel for the plaintiff, Mr Karthi Kanthabalan ('KK') at encl 184 *Jld* 4/4 notes of proceedings p 1189 of the:

KK: Therefore, Madam, I am suggesting to you again, what has been given to Court is only a fraction of the entire review that was undertaken in this case, you can agree or disagree with me?

DW10: I disagree.

The attendees — not recorded

[61] The minutes of the 'internal nursing review' conducted by Prince Court Medical Centre to identify the root cause of the patient's fall do not state those who had attended the meeting.

Further cross-examination of DW10, Miss Puspa a/p Tharmalingam by counsel for the plaintiffs, Mr Karthi Kanthabalan ('KK') encl 184 *Jld* 4/4 the notes of proceedings pp at pp 1217–1218:

Court: Look at p 4. Why are the names of the team who conducted the review not in the report?

DW10: I am not sure, My Lord.

Court: The date of the review is also not stated there. You don't know?

DW10: This was just the sequence of events they prepared during the informal nursing review.

Court: So it's a sequence of events. So where is the review then, where is the review assessment?

DW10: I don't have any evidence to show you that, My Lord. Whatever they have discussed, that is what been documented in the incident reporting on the control measures.

Court: Who are they?

DW10: Nursing team.

Court: Give me the names?

DW10: Sister Norzila, Nurse Manager, Staff Nurse Zulia and Director of Nursing, Miss Tan Peck Hong.

Adverse inference drawn

[62] Illustration (g) to s 114 of the EA provides as follows:

> The court may presume that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it.

[63] Adverse inference under s 114 Illustration (g) of the Evidence Act is drawn against Prince Court Medical Centre for failure to call witnesses to shed light on the non-disclosure of the incident reports prepared by the nurses on duty and an internal nursing review conducted after the fall despite opportunity given by the court.

(See *Sabah Shell Petroleum Co Ltd & Anor v The Owners of and/or Any Other Persons Interested in the Ship or Vessel the 'Borcos Takdir'* [2012] 5 MLJ 515 at [92] HC per Nallini Pathmanathan J and *Marappan a/l Muthusamy v R Sivam a/l Ramasamy* [2014] 4 MLJ 428 at [28] CA per Rohana Yusuf JCA.)

[64] The witness Miss Puspa a/p Tharmalingam (DW10) called by Prince Court Medical Centre has testified she has no knowledge of the events and had no actual knowledge of the documents that were produced in court in B 29 encl 166 (see encl 184 *Jld* 4/4 the notes of proceedings pp 1165–1170). I find this witness unreliable. In any event, I find she had not made any efforts to ascertain all the facts before coming to court to testify.

Prince Court Medical Centre failed to report the fall to the Ministry Of Health ('MOH')

[65] Besides the non-disclosure of the incident reports prepared by the nurses on duty and an internal nursing review conducted after the fall, Prince Court Medical Centre had also breached a clear statutory duty to report the fall to the MOH. Counsel for the patient contends they did not want scrutiny because the MOH would have undertaken an inquiry into the fall. Such a report can also be used as an admission in a court suit by the patient.

[66] The statutory duty to report the fall to the MOH has been set out above by me as part of the material background facts. According to the MOH Director General Directive No 1 of 2010:

(a) the goals of incident reporting are, inter alia, to improve the safety and

quality of patient care, to focus the attention of private healthcare facility or service (PHFS) that has experienced the incident on understanding the causes and on making changes to reduce or eliminate the probability of the incident occurring in the future (see para 2 manual on incident reporting dated December 2010);

(b) the report on the fall would be reviewed by the Incident Reporting Working Committee (Ministry of Health) who would discuss the findings in the said incident report and make conclusions and recommendations (see para 4.3 manual on incident reporting dated December 2010); and

(c) all incident reporting forms and its findings are retained for such period as specified under any written law pertaining to limitation period (see para 6.5 Manual on Incident Reporting dated December 2010).

[67] As stated by me above, from the MOH website there is a version 2.0 of the incident reporting guideline titled 'Guidelines on Implementation — Incident Reporting and Learning System 2.0 for Ministry of Health Hospitals First Edition 2017 dated 2017'. It is unclear if this version 2.0 is also applicable to all private healthcare facilities in Malaysia. What is clear is that version 2.0 merely expands on the detailed steps to be taken. The goals of incident reporting etc remain the same as spelt out in the manual on incident reporting dated December 2010.

DW10 testified the fall was not reported to MOH

[68] Witnesses for Prince Court Medical Centre never explained satisfactorily why no report was made to MOH on the fall. Miss Puspa a/p Tharmalingam (DW10) under cross-examination conceded she knew the requirement under the law to report but initially said she was not sure if it was reported or not. When pressed by counsel, she finally admitted it was not reported to MOH.

Cross-examination of DW10, Miss Puspa a/p Tharmalingam by counsel for the plaintiff, Mr Karthi Kanthabalan ('KK') at encl 184 *Jld* 4/4 the notes of proceedings pp 1165–1170):

KK: Madam, are you familiar with quality and assurance protocols that they had in Prince Court?

DW10: Yes.

KK: *Madam, you know that incident reporting is a requirement under the Private Healthcare Facilities & Services Act?*

DW10: *Yes.*

...

KK: Now, *you would also know any falls in the hospital that results in injury, even a*

concussion, you must undertake incident reporting, correct?

DW10: *Yes*.

KK: And you know this, following the incident reporting, there should be a review or sometimes more than one review is needed to find out what happened, correct?

DW10: Yes.

KK: Now, this review that is being undertaken, the minutes of these reviews are recorded, correct?

DW10: Yes.

KK: Now, one of the purposes of the review is to find out the cause of it, correct, what caused the patient to fall?

DW10: Yes.

KK: In fact, *the termused in hospitals is root cause analysis*?

DW10: *Yes*.

KK: *So, whatever the cause of the patient falling, whether there was a mechanical failure, there was a drug overdose, adverse reaction or the patient just decided to jump over, there must be a finding made as regards what happened, correct*?

DW10: *Yes*.

KK: Now, that report, Madam, there are two broad responsibilities for the quality and assurance. One is to send that report to the Director-General of Health, correct?

DW10: You mean MOH?

KK: Yes, MOH. So, Ministry of Health has got an incident reports committee, correct?

DW10: Yes.

KK: You know, the requirement is, the incident report itself must be sent within 24 hours of the incident, correct?

DW10: Yes.

KK: *In this case, a report was sent, correct*?

DW10: *To MOH*?

KK: Yes, MOH.

DW10: *I'm not sure*.

...

KK: If you don't know, just say you don't know because we accept, when it happened, you were not there, you were still a nurse in the ICU ...

DW10: Yes.

KK: But we would have expected you to check the documents before coming to Court because you are here as a witness on behalf of the quality and assurance ...

DW10: *So, in that case, it is not reported to MOH*.

KK: Why Madam?

DW10: This was the very first fall with injury we had. So, the team were more into

looking at the patient's condition and stabilizing the patient. So, there were no trigger point that we have to report to MOH.

KK: Well-rehearsed answer but you've not answered my question. *Why was this not reported because it's a requirement by law for Prince Court to report within 24 hours*? There are penal sanctions if you don't. Are you telling me that they disregarded the law in this case and not report this case to MOH?

DW10: *In 2018, I wasn't in the Quality, so I am not sure why it was not* ...

Adverse inference drawn

[69] In any event the person (or persons) in Prince Court Medical Centre who made the decision not to report was never called to testify. The court will draw an adverse inference under s 114 Illustration (g) of the EA against Prince Court Medical Centre for failure to call this witness.

(See *Sabah Shell Petroleum Co Ltd & Anor v The Owners of and/or Any Other Persons Interested in the Ship or Vessel the 'Borcos Takdir'* [2012] 5 MLJ 515 (HC) at [92] per Nallini Pathmanathan J and *Marappan a/l Muthusamy v R Sivam a/l Ramasamy* [2014] 4 MLJ 428 (CA) at [28] per Rohana Yusuf JCA.)

Counsel's explanation

[70] Counsel for Prince Court Medical Centre justified the non-reporting on the basis the reporting must be done within 24 hours and it was not reported as the seriousness of the fall was not known till after the 24 hours (see notes of proceedings dated 22 August 2024).

[71] Counsel for the patient in rebuttal showed the court evidence that Prince Court Medical Centre was indeed aware within 24 hours. He pointed out the evidence in encl 37 *ikatan dokumen bersama* (*Bah* B) *Jld* 3/9 Bundle B3 at pp 584, 586, 589 and 592 which are physician progress notes which show the recording of the doctors' notes that the patient's CT brain scan shows intracerebral bleeding. I accept the submissions of learned counsel for the patient and commend him for his mastery of the facts to assist the court.

Blaming the patient and the family

[72] After the fall it is clear to me that Prince Court Medical Centre tried to shift the blame to the patient and the family and hid the cause of the fall. In a letter to Mr Goh Seng Kok dated 26 October 2018 the Chief Executive Officer Mr Mahenthiran Thanapal (DW8) said:

> *We have conducted a thorough investigation* and discussed your concerns with her nursing team ... *In view of Mdm Lim's fall at home* on her admission day and her general health condition, *family members were encouraged to room in with her* ... *All 4 side rails were up* ... (Emphasis added.)

(See: encl 47 *ikatan dokumen tambahan bersama* (*Bah* B) Bundle B11 p 58.)

[73] This letter was contradicted by a subsequent letter from Prince Court Medical Centre to Mr Goh Seng Kok dated 9 January 2019. This letter was again written by the Chief Executive Officer Mr Mahenthiran Thanapal (DW8):

> However, *we regret to note* that the hospital or the doctors *were not informed* by family members that the patient has had fall or falls at home just prior to her admission to Prince Court Medical Centre for dengue. This fact was *only informed after* the incident. *If it was made known to the Hospital* or the Doctor that she had a fall or falls at home just prior to admission, *her admission would have been different*. (Emphasis added.)

(See: encl 47 *ikatan dokumen tambahan bersama* (*Bah* B) Bundle B11 p 61.)

[74] When confronted with the contradicting contents of the two letters and also Dr Shamin's note in the medical records which recorded the info from the patient's family of the fall at home (p 583 of Bundle B3), Mr Mahenthiran attempted to justify the contradiction by saying that 'This is the fall on the day of the admission, we're referring to other falls than this'. I find Mr Mahenthiran is not a credible witness.

Cross-examination of DW8, Mr Mahenthiran Thanapal by counsel for the plaintiff, Mr Desmond Mun Ching Yong ('DM') at encl 184 *Jld* 4/4 the notes of proceedings pp 1045–1050 of the notes of proceedings:

> DM: Mr Mahenthiran, I refer you to a letter sent by Prince Court at bundle B11, page 58. This was a letter signed-off by you as well?
>
> DW8: Yes.
>
> DM: At p 58, para 6, on 25.09.2018, it says, '... *In view of Madam Lim's fall at home*, on her admission day and her general health condition, family members were encouraged to room in with her'. This letter was from you and this was sent out much earlier, 3 months before *your January letter where you said that the doctors and the hospital were not informed of the fall. Do you agree now that your January letter was not accurate*?
>
> DW8: *No, I disagree*.
>
> DM: *And why do you disagree*?
>
> DW8: *This is the fall on the day of the admission, we're referring to other falls than this*.
>
> DM: I don't follow, Mr Mahenthiran. Can you ...?
>
> DW8: This letter states the fall at home on her admission day. Based on the information that the nursing team informed us when I signed-off second letter was referring to other falls prior to this.
>
> DM: Let's go one by one. Page 58, you're saying what is this statement referring to?

DW8: This is referring to the fall on the admission day whereas the other letter, page 61, is with reference to other falls other than the fall on the admission day that we were not aware of.

DM: Mr Mahenthiran, page 61, it says, 'If it was made known to the hospital or the doctor that she had fall or falls at home just prior to admission ...', isn't it the same thing?

DW8: No. This is based on what was informed to me. If you allow me to explain, these letters are prepared by a team, Jenny that you just mentioned, after consulting various other teams of caregivers, including the doctors who treated her and then it comes to me, I'm at the final end. So investigation everything has been done before I signed-off. So based on information given to me, this is with reference to other falls other than the fall on the admission day.

DM: I'm sorry, Mr Mahenthiran, I beg to differ. The letter is quite clear, it doesn't seem to ...

DM: *Mr Mahenthiran, I'm just going to put it to you, based on your October letter where you had said that there was a fall and then later on at page 61, you had changed your position saying that you were not informed of any falls. I am putting it to you that there has been a change in position by the hospital and basically it is really to shift the blame onto the patient and the family, for the fall.*

DW8: I disagree. (Emphasis added.)

Court's conclusion on the cause of the fall

[75] Taking into account the evidence adduced, in particular the two self-contradicting letters from Prince Court Medical Centre to the patient's family dated 26 October 2018 and 9 January 2019 (pp 58 and 61 of Bundle B11), the incident report dated 26 September 2018 and PCMC Nursing Team Review (encl 166 *ikatan dokumen defendan pertama dan defendan ketiga* (2) Bundle B29); and after hearing the witnesses in particular Dr Nick Chong and Nurse Zulia it is my considered view the fall was due to a malfunctioning of the 'old paramount bed' in the sense that there was a mechanical malfunctioning of the cot side whereby it went down and the patient must have rolled over or fallen off the bed.

Mechanical failure of the cot side

[76] Dr Nick Chong testified under cross-examination on 26 April 2024 (notes of proceedings pp 1097–1098) that the patient could have fallen due to a mechanical failure of the cot side. He testified:

> ... *the cot side when it's put up can suffer mechanical failure. I have seen it many times before that is you lean on the cot side, I was doing my ward round, the whole thing just gave way*. That's a possibility as well, it's *a common problem*. (Emphasis added.)

[77] I note that this testimony of Dr Nick Chong that he has seen many times the cot side just giving way due to mechanical failure was not contradicted by witnesses from Prince Court Medical Centre or in the cross-examination of him by counsel for Prince Court Medical Centre.

PATIENT WAS JUST TOO WEAK

[78] Dr Nick Chong also testified the patient was just too weak to climb over the guard rails and the spacer.

Continued cross-examination of DW9, Dr Nick Chong Chung King by counsel for the plaintiff, Mr Karthi Kanthabalan ('KK') at encl 184 notes of proceedings *Jld* 4/4 the p 1128 of the notes of proceedings:

> KK: Doctor, on the last occasion when I asked you, if at all this patient had suffered the adverse reactions to these two drugs, Tramadol and Stilnox, on the fateful early morning of 26.08.2018, the *only plausible explanation is if she were to jump over her cot side and I distinctly remember you saying that's not possible*?
>
> DW9: No.
>
> KK: Why Doctor, could you explain?
>
> DW9: *It takes a lot of effort to climb over the guard rails and the spacer and if she's already needing help to sit up as alluded by the nurse who actually saw her before, I don't see her being able to climb over the guard rail.*
>
> KK: I have no further questions, My Lord.

[79] Nurse Zulia DW5 testified that the patient was too weak to climb out of bed on her own if the cot sides/guard rails were up and the bed spacer was in place.

Re-examination of Nurse Zulia DW5 by her counsel encl 183 *Jld* 3/4 the notes of proceedings pp 1014–1016 and 1019:

> SN: Cik Zulia, walaupun terdapat bed spacer, bolehkah seorang pesakit turunkan kaki beliau?
>
> DW5: *Agak susah untuk Madam Lim Yoke Har sebab dia mengalami lemah dekat kaki dia*. Kalau patient yang normal macam saya yang boleh bergerak kiri dan kanan, mungkin boleh.
>
> ...
>
> DW5: Yang Arif, *Puan tanya saya, kalau duduk boleh tak dia keluarkan kaki dia melalui bed spacer itu kan. Boleh, tapi agak susah untuk Madam Lim Yoke Har lah*. Kalau macam saya, keadaan normal macam saya, yang awake, yang boleh pusing kiri kanan ini, saya boleh keluarkan kaki, Yang Arif. *Tapi kalau untuk Madam Lim Yoke Har, kalau dia kuat, kekuatan dia, mungkin dia boleh keluarkan kaki sedikit tapi*

> *bukan semua lah masudnya*, Yang Arif. Mungkin keluarkan tapi kena angkat lah, Yang Arif. Dia perlukan daya dia, Yang Arif. Jawapan itu saya macam tak tahu macam mana nak jawab, Yang Arif, untuk dia boleh ke tak boleh. Itu atas daya kekuatan dia, Yang Arif.
>
> ...
>
> SN: *So you tidak tahu bagaimana cara dia jatuh dari katil*?
>
> DW5: *Saya tidak tahu*.

Change to new bed

[80] In the Incident Report, the two nurses who were stated to have investigated the fall, one Ms Deborah and Norzila Ghani (DW4) recommended the following 'controls' to be 'implemented':

> Reinforced all staff nurses in ward *if MFR high risk patient change to new paramount bed*. (Emphasis added.)

See: encl 166 *ikatan dokumen defendan pertama dan defendan ketiga* (2) Bundle B29 p 2. MFR stands for Morse Fall Risk scale. It is a scale used to predict a patient's likelihood of falling by evaluating individual risk factors.

[81] This is consistent with the entry in the PCMC Nursing Team Review that states the 'patient placed on *old paramount bed*'. (Emphasis added.)

(See: encl 166 *ikatan dokumen defendan pertama dan defendan ketiga* (2) Bundle B29 p 5 under the heading outcomes.)

Nurse Zulia Q and A 25–26

[82] I am aware that Nurse Zulia did say in her witness statement Q and A 25–26 that immediately after the fall she had asked the patient 'aunty nak pergi ke mana?' and Nurse Zulia said the patient answered 'saya mahu pergi ke tandas' and 'anak saya di mana?'

[83] The patient's answer 'saya mahu pergi ke tandas' does not necessarily mean that the patient is saying she fell because she got up of bed by climbing over the cot side to go to the toilet. The patient's answer 'saya mahu pergi ke tandas' can simply mean that she told Nurse Zulia she wants to go to the toilet. Taking into account the totality of the evidence one cannot read too much into the answer 'saya mahu pergi ke tandas' for these reasons:

(a) in the re-examination of Nurse Zulia DW5 by her counsel, Nurse Zulia testified candidly that the patient was too weak to move her legs in between the bed spacer and she doesn't know how the patient fell off the bed.

Re-examination of Nurse Zulia DW5 by her counsel encl 183 notes of proceedings *Jld* 3/4 pp1014–1016 and 1019:

SN: Cik Zulia, walaupun terdapat bed spacer, bolehkah seorang pesakit turunkan kaki beliau?

DW5: *Agak susah untuk Madam Lim Yoke Har sebab dia mengalami lemah dekat kaki dia*. Kalau patient yang normal macam saya yang boleh bergerak kiri dan kanan, mungkin boleh.

...

DW5: Yang Arif, *Puan tanya saya, kalau duduk boleh tak dia keluarkan kaki dia melalui bed spacer itu kan. Boleh, tapi agak susah untuk Madam Lim Yoke Har lah*. Kalau macam saya, keadaan normal macam saya, yang awake, yang boleh pusing kiri kanan ini, saya boleh keluarkan kaki, Yang Arif. *Tapi kalau untuk Madam Lim Yoke Har, kalau dia kuat, kekuatan dia, mungkin dia boleh keluarkan kaki sedikit tapi bukan semua lah masudnya*, ...

...

SN: *So you tidak tahu bagaimana cara dia jatuh dari katil*?

DW5: *Saya tidak tahu*.

(b) Nurse Zulia's testimony in Q and A 25–26 that she asked the patient 'aunty nak pergi ke mana' is not stated in both the incident report dated 26 September 2018 and PCMC Nursing Team Review (encl 166 *ikatan dokumen defendan pertama dan defendan ketiga* (2) Bundle B29) which are contemporaneous reports. What was stated in the incident report dated 26 September 2018 (at B29 p 2) is 'Patient verbalizes told, she want to go to toilet. Quick assessment done'. What was stated in the PCMC Nursing Team Review (at encl 166 *ikatan dokumen defendan pertama dan defendan ketiga* (2) Bundle B29 p 11) is 'Patient verbalised that she wanted to go to toilet'. Therefore, the correlation between the reason for the fall and the words 'Patient verbalized that she wanted to go to toilet' is missing;

(c) both the incident report dated 26 September 2018 and PCMC Nursing Team Review (encl 166 *ikatan dokumen defendan pertama dan defendan ketiga* (2) Bundle B29) which are contemporaneous reports do not state that patient told Nurse Zulia that she fell because she got up of bed by climbing over the cord side to go to the toilet. Neither was there a finding or conclusion that the patient fell because she got up of bed by climbing over the cot side to go to the toilet;

(d) Dr Nick Chong had also testified that the patient was just too weak to climb over the cot side and the spacer.
Continued cross-examination of DW9, Dr Nick Chong Chung King by counsel for the plaintiff, Mr Karthi Kanthabalan ('KK') encl 184 notes of proceedings *Jld* 4/4 at p 1128 of the notes of proceedings:

KK: Doctor, ... *the only plausible explanation is if she were to jump over her cot side and I distinctly remember you saying that's not possible*?

DW9: No.

KK: Why Doctor, could you explain?

DW9: *It takes a lot of effort to climb over the guard rails and the spacer and if she's already needing help to sit up as alluded by the nurse who actually saw her before, I don't see her being able to climb over the guard rail.*

(e) in both the amended nursing report (encl 39 *ikatan dokumen bersama* (*Bah* B) *Jld* 5/9 Bundle B5 p 1422) and the original unamended nursing report (encl 39 *ikatan dokumen bersama* (*Bah* B) *Jld* 5/9 Bundle B5 p 1424) Nurse Zulia did not state the exchange of words between her and the patient. These are contemporaneous reports;

(f) it is also significant that Nurse Zulia did not write in her original and amended nursing reports that the patient fell because she got up of bed by climbing over the cot side to go to the toilet. Her failure to write is consistent with her Q and A 25 and 26 where she did not state that the patient fell because she got up of bed by climbing over the cot side to go to the toilet;

(g) *Nurse Zulia had testified under cross-examination* (encl 183 notes of proceedings *Jld* 3/4 p 893) that the patient was way too weak to walk unaided:

DW5: She can ambulate. Dia boleh bergerak, aunty boleh bergerak, *cuma badan dia sangat lemah* ... Sorry, minta maaf, 2:45 dia masih sedar, dia masih tahu apa jadi dengan dia

KK: *Yes, but she was not in a position to walk* ...?

DW5: *Yes, I agree, betul.*

(h) there is no reason for the patient to get up of bed on her own, climb over the cot side or slip between the bed spacer to go to the toilet. Nurse Zulia had attended to her at 2am. She fell down five minutes later. If she had wanted to go to the toilet she would have already asked Nurse Zulia to take her at 2am; and

(i) in any event the evidence shows she always asked the nurses to take her to the toilet. She would be brought on a commode. There is no testimony by witnesses for Prince Court Medical Centre that she had even once walked herself to the toilet. The evidence shows:
Nurse Zulia under cross-examination encl 183 notes of proceedings *Jld* 3/4 pp 817, 898–899:

KK: Dan mengikut apa yang Puan telah beritahu dalam jawapan untuk soalan No 6 adalah Puan telah menjawab loceng. So pesakit ini bila dia nak pergi toilet, dia ada tekan loceng memanggil nurse, betul?

DW5: Betul.

KK: Dan *Puan telah membawa beliau ke tandas menggunakan kerusi commode*?

DW5: Betul.

KK: Sila jelaskan kepada Mahkamah apa kerusi commode ini?

...

KK: Soalan saya, *sebelum incident jatuh itu, daripada masa Puan start 19.09.2018, memang daripada nota dan daripada keterangan Puan, Puan tahu bahawa pesakit bila dia nak pergi toilet, dia akan panggil call bell, betul*?

DW5: *Betul*.

...

KK: Ya lah, kalau Puan ada, memang Puan akan attend tapi *kalau pesakit perlukan and nurses are not there, she'll use the call bell lah, kan*?

DW5: *Betul*.

Patient's case against the second defendant Dr Nick Chong

[84] After the completion of testimonies by the witnesses, the patient's counsel in his closing submissions says Prince Court Medical Centre 'is solely liable for the fall' and that Dr Nick Chong 'could not be blamed for the fall' (see encl 196 plaintiff's written submissions paras 3–4).

Patient's case against the third defendant Nurse Zulia

[85] Counsel for the patient contends that Nurse Zulia had altered the contemporaneous medical records (which were in regard to the period leading up to the fall) more than 27 hours after the fall so as to escape blame (see encl 196 plaintiff's written submissions para 33.2).

[86] I have set out above the changes in the medical records. To my mind, there is nothing sinister when a nurse like Nurse Zulia amended the medical records. In my view the first duty of the nurse is to treat a patient and not to make copious notes. The fact that changes were made do not necessarily mean the amendments are false. In any event, this has not been proven.

[87] Counsel for the patient also contends that Nurse Zulia had failed to put in place the bed spacer and/or raise up the bed cod/*pagar katil*. At the end of the day after hearing the witnesses and studying the documents I am unable to come to this finding.

[88] In the premises, I find that the patient's case against Nurse Zulia had not been made out.

[89] I now move on the consider the quantum of the claim against Prince Court Medical Centre.

QUANTUM

Law on special damages

[90] If the evidence shows that the special damages are more than the amount pleaded in the statement of claim, the court can award the actual amount. In *Mat Jusoh bin Daud v Syarikat Jaya Seberang Takir Sdn Bhd* [1982] 2 MLJ 71 at p 76 Salleh Abbas FCJ had stated as follows:

> The question which confronts me at the moment is this, ie whether I could increase the special damages to an amount exceeding the sum pleaded in the statement of claim. It must be observed that the amount of excess was not one that was not asked for. Counsel for the plaintiff, because of the mistaken view he formed of the matter asked for this amount as part of the plaintiff's claim for general damages and so he did not include it, nor did he rightly calculate the amount of special damages asked for in the pleadings. *In my view since the amount of loss was proved by evidence justice demands that I should ignore the figure pleaded. After all, if a judge can reduce the amount pleaded because of the effect of the evidence he surely is entitled to increase the amount if the evidence warrants it*. (Emphasis added.)

[91] The evidence regarding expenses incurred may be given through documents or the oral testimony of the witnesses or both. The absence of documentary evidence is not fatal. The court can accept the oral testimony of the plaintiff or a witness that a particular expense has indeed been incurred based on common sense. As example would be the plaintiff can produce a record of a visit to the doctor but can't produce the taxi receipt. A quantum will be allowed based on a reasonable sum and justifiable in the circumstances.

(See definition of 'evidence' in s 3 of the Evidence Act 1950, *Rohgetana a/p Mayathevan (an infant suing through his father and litigation representative, Mayathevan a/l Mayandi) v Dr Navin Kumar & Ors and other appeals* [2017] 4 MLJ 102 (CA) at [16] and *ABDA Air Freight Sdn Bhd v Sistem Penerbangan Malaysia Bhd* [2001] 3 MLJ 641 (HC) at p 678 per Abdul Malik Ishak J.)

Items in dispute

[92] Counsel for the plaintiff and all three defendants have agreed to most of the items (see encl 220 amended table of comparison dated 26 August 2024) and narrowed down the items to be decided by me as follows:

(a) the cost of acupuncture treatment; and

(b) future general damages multiplier.

[93] I will consider these two items one by one.

The cost of acupuncture treatment

[94] The plaintiff has claimed for RM2,000 per month. Prince Court Medical Centre objected. I allow this claim at RM1,000 per month.

[95] I do not see why a court can allow western medicine treatment but should reject a claim for traditional and complimentary medicine ('T and CM'). After all, if one goes to the website of MOH Malaysia one can see the official portal for T and CM. We even have the Traditional and Complementary Medicine (T&CM) Act 2016 (Act 775).

[96] A claim for complimentary medicine (Ayurvedic) was allowed by the Court of Appeal in *Rohgetana a/p Mayathevan (an infant suing through his father and litigation representative, Mayathevan a/l Mayandi) v Dr Navin Kumar & Ors and other appeals* [2017] 4 MLJ 102 (CA) at [16, 22–23].

Future general damages multiplier

[97] Dr Akmal Hafizah had in her expert report given an additional life expectancy of seven years from 25 September 2018 for the patient based on her first clinical assessment on 6 April 2019. She maintained her views after her recent assessment of the patient on 1 December 2023. See: Q & A 10 of the witness statement (encl 146).

[98] Dr Theva Raj had opined in his expert report that the patient's additional life expectancy was 1.3 to 2.3 years from the date of his assessment of the patient on 18 April 2021. the patient has outlived his estimate. When asked by the court, Dr Theva Raj undertook a further calculation in court and gave a new estimate that the patient may survive another 1.5 to 1.9 years from her current age of 81 years. This would result in a multiplier of 1.9.

[99] Counsel for the patient submitted that a multiplier of three years (a slight increase from Dr Theva Raj's revised estimate of 1.9) is fair as the patient had outlived Dr Theva Raj's previous estimate and is still alive with the best of care that her family can provide for her.

[100] I accept the submission of counsel for the patient. The English High Court in *Robshaw (A Child) v United Lincolnshire Hospitals NHS Trust* [2015] All ER (D) 21 (Apr); [2015] EWHC 923 (QB) at pp 361–362 accepted the view that the quality of care received can improve the quality of a life. The court

is never bound by scientific certainty in these matters and can adjust the life expectancy thrown up in the generality of cases based upon the available statistics.

[101] I therefore award a multiplier of three years.

What are the damages for pain and suffering and loss of amenities of life?

[102] Damages for pain and suffering and loss of amenities of life consists of two components. One is pain and suffering. The second is loss of amenities of life. Loss of amenities of life means the loss in the quality of life and lifestyle changes that a patient has had to endure as a result of his or her injuries.

[103] The patient's counsel has shown the court seven cases where the courts have awarded between RM400,000 to RM500,000 for pain and suffering and loss of amenities of life for brain injuries.

[104] The patient's counsel submits a sum of RM500,000 is fair in this case based on the following facts:

(a) the patient was a very active and cheerful person and enjoyed cooking for her children whenever they visited. She was a very independent woman and needed nobody's assistance in any of the house chores. She also enjoyed gardening. These can be seen from the testimonies of her children and photographs produced in court.
(See: encl 46 ikatan dokumen bersama (*Bah* C) Bundle B10 pp 4 and 5);

(b) after the tragic fall however, the patient lies in bed in 'a persistent vegetative state' not able to talk or recognise anyone (see encl 60 witness statement of Goh Seng Cha PW2 Q and A 22 and 24.) Some photos of her in current condition can be seen in encl 46 ikatan dokumen bersama (*Bah* C) Bundle B10 pp 16 to 19;

(c) she was no longer able to do amongst others the following:

(i) to vocalise and communicate;

(ii) to swallow and clear phlegm without assistance;

(iii) to breathe well without support;

(iv) to indicate her own needs;

(v) to move any of her limbs;

(vi) to follow any command;

(vii) to control her bowel and bladder movements; and

(viii) to feed herself.

(See: encl 71 *ikatan laporan pakar-pakar plaintif* (Prof Dr Mohd Idzwan, dll) Bundle B16 p 53, pp 7–12, 22 of Bundle B28.)

[105] Following the fall, she suffered from an intracerebral bleed and had to undergo a craniotomy to evacuate the haematoma on 27 September 2019. Additionally, she also had to undergo five remedial surgeries/procedures, all of which were undertaken at Prince Court Medical Centre as follows:

(a) extubation and tracheostomy insertion;

(b) replacement of tracheostomy;

(c) bronchoscopy to clear retained secretions;

(d) bronchoscopy and bronchial lavage of retained secretions; and

(e) permanent tracheostomy insertion.

(See: encl 71 *ikatan laporan pakar-pakar plaintif* (Prof Dr Mohd Idzwan, dll) Bundle B16 pp 52–53.)

[106] She was only discharged on 20 December 2018. She was in Prince Court Medical Centre for a long period of around three months. She spent much of that period in either the ICU or the High Dependency Unit (HDU).

[107] For the six remedial procedures that she had to undergo following the fall as set out above where she spent a long period of around three months in either the ICU or the High Dependency Unit (HDU), counsel for the patient says an additional sum of RM100,000 should be awarded for pain and suffering and loss of amenities of life making a total of RM600,000.

[108] A sum of RM500,000 is fair in my view.

Is the patient entitled to aggravated damages?

The law on aggravated damages

[109] This is a suitable case for the court to award aggravated damages. I have to say that the facts here justify an award on the higher end of the scale.

[110] A court of law will award aggravated damages if:

(a) a defendant's conduct towards the plaintiff was motivated by spite or malevolence; and

(b) a defendant's conduct was high-handed so as to increase the plaintiff's mental pain and suffering.

[111] The Federal Court in *Dr Hari Krishnan & Anor v Megat Noor Ishak bin Megat Ibrahim & Anor and Another Appeal* [2018] 3 MLJ 281; [2018] 3 CLJ 427 (FC) at [99] ('Dr Hari Krishnan') has categorically held that aggravated damages can be awarded for medical negligence cases and against a dishonest doctor or dentist who had carry out unnecessary work on a patient for profit. The Federal Court said:

> [98] Aggravated damages have, in fact, been awarded as a separate head of damages by Malaysian courts. In the recent decision of this court in *Mohd Ridzwan bin Abdul Razak v Asmah bt Hj Mohd Nor* [2016] 4 MLJ 282; [2016] 6 CLJ 346, the High Court's award of aggravated damages was upheld. This court held that:
>
> > In appropriate cases, substantial damages may be awarded for any indignity, discomfort or inconvenience suffered; even aggravated damages may be awarded in light of the motive or conduct of the tortfeasor ... As an analogy, in *Appleton v Garrett* [1996] PIQRP 1 aggravated damages were given to patients of a dentist for injury to feelings, mental distress, anger and indignation upon learning that much of the dental treatment given to them was unnecessary and to a large extent performed on healthy teeth. The dentist had deliberately and in bad faith concealed from them the true condition of their teeth so that he could carry out dental work for profit ... In the circumstances of this case it was reasonable for the High Court to grant the general and aggravated damages for the proven tort of sexual harassment.
>
> [99] It can be seen from the above cases that aggravated damages can be and have been awarded as a separate head of damage in tort ... There is no reason to exclude this kind of damages from medical negligence cases, which involve real injury to a person's body. In the circumstances, we answer the second question in the negative. As such, the doctors' appeal on quantum is dismissed.

[112] A defendant's conduct will be assessed up to and including the trial itself. It will include the way the litigation and trial are conducted by his counsel. The courts will award aggravated damages if the doctor and hospital refuse to admit liability in clear-cut cases and instead file a defence which causes the matter to be set down for a protracted trial.

(See *Ahmad Radhiq Arbee bin Ahmad Rejal Arbee (as a husband and dependant of Sharifah Shalihah bt Sayed Abdullah, deceased) & Ors v Kerajaan Malaysia & Ors* [2020] 10 MLJ 459 (HC) at [24–25] per Gunalan J.)

[113] The courts will award aggravated damages when the defendant has tampered with the medical records in an attempt to conceal the truth (see *Dato' Stanley Isaacs (suing by himself and as the administrator of the estate of To' Puan Suzanne Thomas, deceased) v The Government of Malaysia & Ors* [2019] 8 MLJ 331 (HC) per Aliza Sulaiman JC).

Application to facts

[114] The following facts in this case show that an award of aggravated damages is justified:

(a) the shifting of blame to the patient for her fall;

(b) the shifting of blame to the patient's family for her fall. This shift relied on a lie which was exposed in cross-examination. I shall elaborate more on this below;

(c) the deliberate non-disclosure of material evidence ie incident reports prepared by the nurses on duty and the internal nursing review conducted into the fall;

(d) when the court ordered the disclosure of the incident reports prepared by the nurses on duty and the internal nursing review conducted into the fall there was a deliberate failure to disclose the complete documents;

(e) the suppression of evidence and knowledge of the cause of the fall had resulted in the patient suing her doctor Dr Nick Chong and Nurse Zulia. This no doubt caused unnecessary stress to them not to mention an attack on their reputations as professionals from the time the suit was filed in 2019 to my decision on 27 August 2024;

(f) the failure to report the fall to the MOH within 24 hours or immediately thereafter and thereby avoiding a statutory inquiry into the fall;

(g) perversion of the course of justice; and

(h) according to Dr Nick Chong it was common knowledge that the cot sides suffer mechanical failures. The old beds should have been checked immediately and replaced before a tragic fall happens. It required the tragic fall in the case before me before Prince Court Medical Centre decided to replace all the old with new beds. This is a case of penny-wise pound-foolish.

The shifting of blame to the patient's family for her fall

[115] Understandably the patient's family sought explanations from Prince Court Medical Centre.

[116] On 26 October 2018, Prince Court Medical Centre wrote to the patient's family to shift the blame to them for her fall. Prince Court Medical Centre referred to the patient's fall at home, before the admission. This is what they said:

> In view of Mdm Lim's fall at home on her admission day and her general health condition, family members were encouraged to room in with her.

(See: encl 47 *ikatan dokumen tambahan bersama* (*Bah* B) Bundle B11 p 58.)

[117] From this letter, it is clear that Prince Court Medical Centre was well aware that the patient had suffered a fall at home prior to her admission to Prince Court Medical Centre.

[118] However, in a subsequent letter to the family dated 9 January 2019, they now expressed their regret to note that the hospital or the doctors were not informed by family members that the patient has had fall or falls at home just prior to her admission to Prince Court Medical Centre for dengue. They also stated in that letter that Prince Court Medical Centre cannot be blamed for the fall because they were not informed of the fall at home:

> However, *we regret to note* that the hospital or the doctors *were not informed* by family members that the patient has had fall or falls at home just prior to her admission to Prince Court Medical Centre for dengue. This fact was *only informed after* the incident. *If it was made known to the Hospital* or the Doctor that she had a fall or falls at home just prior to admission, *her admission would have been different*. (Emphasis added.)

(See: encl 47 *ikatan dokumen tambahan bersama* (*Bah* B) Bundle B11 p 61.)

[119] Even in court proceedings Prince Court Medical Centre did not come clean but continued to pervert the course of justice. Witness for Prince Court Medical Centre DW8, Mr Mahenthiran Thanapal continued to deny there was a contradiction in his two letters.

Aggravated damages quantum

[120] The counsel for the plaintiff submits a sum of RM1m for aggravated damages. He relies on *Dr Hari Krishnan.*

[121] In *Dr Hari Krishnan,* the High Court in a judgment dated 1 September 2010 (unreported) had awarded a sum of RM1m for aggravated damages which was affirmed by the Court of Appeal on 22 April 2014 (*Dr Hari Krishnan & Anor v Megat Noor Ishak bin Megat Ibrahim & Ors and another appeal* [2015] MLJU 1857; [2015] 1 LNS 1476 (CA) and by the Federal Court on 14 December 2017.

[122] The Federal Court when affirming the award of RM1m did not set out its analysis of the factors. The factors were considered by the Court of Appeal. The dishonesty by the defendant surgeon in question in his treatment of the patient was considered material by the High Court and Court of Appeal. Rohana Yusuf JCA said:

[68] ... The plaintiff was and with severe pain, continuous bleeding and finally a total loss of vision of his right eye after the second operation. *The plaintiff was made to believe that his eye sight would return and was given false hope when he was made to stay in for seven days in the hospital, to sit whenever possible in an upright position at all times, so that the blood in his right eye could subside, which gave him false hope that he would regain his eyesigh*t. In evidence, the first defendant in fact had already decided at the operation table to prevent painful blind eye subsequently by removing the lens.

[69] The plaintiff was not informed at the earlier instance that his right eye was beyond salvation and nothing could be done to rescue the situation. This had caused the plaintiff to suffer severe nervous shock, extreme anxiety and distress. The plaintiff was depressed and experienced a fear of future incapacity in the event something were to happen to his remaining functioning eye (left eye).

[70] The plaintiff also suffers embarrassment, humiliation and discomfort at the workplace and in public due to the lack of vision and movement in his right eye. The plaintiff wears a pair of sunglasses to shield his blind right eye.

[71] The plaintiff had been deprived of the ordinary experience one would go through as he has lost the sight in one eye. He is only able to experience the joys of life through one eye and is no longer able to experience the full pleasures in activities that he enjoys such as reading and playing golf.

[72] The plaintiff testified he had lost prospect of promotion in his job as the General Manager, Group Legal Division of UMW, that he was due to be promoted to the position of Corporate Director or Executive Director. The plaintiff was not promoted for the last ten years due to his loss of sight in one eye, compared to his contemporaries. *In our view the learned JC did take into account to the about facts in awarding aggravated damages. We have no reason to disturb the same*. (Emphasis added.)

[123] Applying *Dr Hari Krishnan* to the facts of this case, I am of the view a sum of RM1m for aggravated damages is appropriate. The award of RM1m in *Dr Hari Krishnan* was awarded in 2010. It is now 2024. With inflation over 14 years and the more serious aggravating factors in this case compared to *Dr Hari Krishnan,* which I have set out above, a sum of RM1m for aggravated damages is appropriate.

Is the patient entitled to interest at 4% or 5% or 8%?

[124] *On special damages* the patient in her amended statement of claim had claimed interest at 4%pa from the date of admission to Prince Court Medical Centre to date of judgment and thereafter at 8%pa to date of payment (see Al p 35).

[125] *For general damages and aggravated damages*, the patient in her amended

statement of claim had claimed 8%pa from the date of service of the writ to date of payment (see Al p 35).

[126] Upon query by me, in his written submissions, the patient's counsel has amended the claim for interest to:

(a) interest on special damages at the rate of 4%pa from the date of the fall, 26 September 2018 up to the date of filing of writ, 11 December 2019;

(b) interest on pre-trial damages, general damages for pain and suffering and loss of amenities of life, aggravated damages at the rate of 8%pa from the date of service of the writ, 12 December 2019 until the date of judgment; and

(c) interest on the judgment sum (including costs and pre-judgment interest) at the rate of 5%pa from the date of judgment to the date of payment.

The law on interest

[127] Interest is claimable in any court proceedings for the recovery of any debt or damages from the date when the cause of action accrued to the date of the judgment. This is the pre-judgment period. The rate of interest is at the discretion of the court. The period of interest is also at the discretion of the court (see s 11 of the Civil Law Act 1956).

[128] Section 11 of the Civil Law Act 1956 reads as follows:

> In any proceedings tried in any Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the period between the date when the cause of action arose and the date of the judgment:
>
> Provided that nothing in this section —
>
> (a) Shall authorise the giving of interest upon interest;
>
> (b) Shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
>
> (c) Shall effect the damages recoverable for the dishonour of a bill of exchange.

[129] Post-judgment interest from the date of the judgment to the date of payment is governed by O 42 r 12 of the Rules of Court 2012 which provides that subject to r 12A, except when it has been otherwise agreed between the parties, every judgment debt shall carry interest at such rate as the Chief Justice may from time to time determine or at such other rate not exceeding the rate

aforesaid as the court determines, such interest to be calculated from the date of judgment until the judgment is satisfied. Pursuant to Practice Direction 1/2012, the present prescribed rate of interest is 5%pa (see *Malaysian Civil Procedure 2024* (Vol 1) Sweet and Maxwell at 42/12/1).

[130] Order 42 r 12A Rules of Court 2012 concerns late payment charge on judgment debts arising from financial transactions in accordance with Shariah and is not relevant to the case before me.

APPLICATION TO FACTS

[131] The objective of pre-judgment interest is to compensate the plaintiff for the loss of use of the money which the defendant had kept him out of from the time when he ought to be paid (see *Mirra Sdn Bhd v The Ayer Molek Rubber Company Bhd* [2008] 2 MLJ 348; [2008] 3 AMR 381 (CA) per James Foong JCA).

[132] As the present prescribed rate of interest for post-judgment interest is 5%pa and the current fixed deposit rates are hovering around 3 to 4 %pa, in my view a fair interest rate to award is 5%pa for both pre and post-judgment interests. I shall so award.

Can the plaintiff ask for a Sanderson order?

[133] The patient asks that her claim against Dr Nick Chong should be dismissed but with a Sanderson order for her costs payable to Dr Nick Chong to paid by Prince Court Medical Centre.

[134] A Sanderson order is an order whereby an unsuccessful defendant is ordered to pay the costs which are payable by the plaintiff to the successful defendant (see: *Sanderson v Blyth Theatre Company* [1903] 2 KB 533).

[135] In *Medi-Circle Sdn Bhd v Nur Zulaikha bt Dzulzaili (suing through her father and litigation representative, Dzulzaili bin Muhammad Nor) and other appeals* [2022] MLJU 1575, the Court of Appeal explained the rationale for the discretion to make a 'Sanderson' order is to avoid injustice to a plaintiff who sued multiple parties not knowing which party should be sued for the wrong done. S Nantha Balan JCA said:

> [125] In regards to costs, ... we decided to make a 'Sanderson' order whereby an unsuccessful defendant is ordered to pay the costs which are payable by the plaintiff to the successful defendant (see: *Sanderson v Blyth Theatre Company* [1903] 2 KB 533). In this regard, there is no doubt that the court has the discretion to order the unsuccessful defendant to directly pay the successful defendant's costs. *The rationale for the discretion to make a 'Sanderson' order is to avoid injustice to a plaintiff who sued*

multiple parties not knowing which party should be sued for the wrong done.

[126] We are conscious of the fact that the discretion to make a *Sanderson* order must be exercised with care, given that its exercise has the effect of making the Hospital liable for the costs that are payable by the plaintiff to the successful defendants (ie the O&G doctors).

[127] In the present case, given the circumstances including but not limited to the fact that the medical records were missing and information was not forthcoming despite a pre-action order for discovery, it was reasonable for the plaintiff to have sued all the defendants. But now that the dust of conflict has settled, it has become clear that Dr Ariza and Dr Fatimah ought not to have been cited as parties. Given the situation that presented itself at the time when Suit 144 was filed, we were satisfied that it is fair and just that the Hospital should carry the costs payable to Dr Ariza and Dr Fatimah. We accordingly ordered the Hospital to pay the costs that were awarded against the plaintiff in favour of the O&G doctors. (Emphasis added.)

[136] Going by the medical records and reports disclosed during the pre-action stage, it was reasonable for the patient to have named Dr Nick Chong as a second defendant. With the subsequent late disclosure of evidence, including the nursing review documents ordered to be disclosed by the court, it became clear that there was nothing Dr Nick Chong could have done to prevent the fall.

[137] I allow a Sanderson order for Dr Nick Chong's costs payable by the patient to him be paid by Prince Court Medical Centre.

CONCLUSION FOR SUIT 70

[138] For the action in medical negligence by the patient against Prince Court Medical Centre who is the first defendant, the physician Dr Nick Chong who is the second defendant and the Staff Nurse Zulia who is the third defendant my conclusion is as follows.

The patient's claim against Prince Court Medical Centre

[139] The patient's claim against Prince Court Medical Centre is allowed with costs.

The patient's claim against Dr Nick Chong

[140] The patient has conceded that no liability should be found against Dr Nick Chong. The claim against Dr Nick Chong is dismissed but with a Sanderson order for Dr Nick Chong's costs payable by the patient to him to be paid by Prince Court Medical Centre.

The patient's claim against Nurse Zulia

[141] The patient's claim against Nurse Zulia is dismissed. Since she is defended by Prince Court Medical Centre, I do not need to make a Sanderson order for her costs to be paid by Prince Court Medical Centre.

Prince Court Medical Centre's claim against Dr Nick Chong

[142] Prince Court Medical Centre's claim against Dr Nick Chong for indemnity and contribution is dismissed with costs and Dr Nick Chong's counterclaim against Prince Court Medical Centre is allowed for prayers 16.1, 16.3 and 16.4 in respect of costs only.

Request under O 76 r 12 of the Rules of Court 2012

[143] I have received a request from the patient's counsel for Goh Seng Cha pursuant to O 76 r 12 of the Rules of Court 2012 to hold and manage the judgment sum for the benefit of the patient.

[144] Order 76 r 12 of the Rules of Court 2012 reads as follows:

> *Control of money recovered by person under disability* (O 76 r 12)
>
> (1) *Where in any proceedings —*
>
> (a) *money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability*; or
>
> (b) money paid into Court is accepted by or on behalf of a plaintiff who is a person under disability,
>
> *the money shall be dealt with in accordance with directions given by the Court.*
>
> (2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into Court and invested or otherwise dealt with.
>
> (3) Without prejudice to the foregoing provisions of this rule, directions given under this rule may include any general or special directions that the Court thinks fit to give and, in particular, directions as to how the money is to be applied or dealt with and as to any payment to be made, either directly or out of the amount paid into Court, to the plaintiff, or to the litigation representative in respect of moneys paid or expenses incurred for or on behalf or for the benefit of the person under disability or for his maintenance or otherwise for his benefit or to the plaintiff's solicitor in respect of costs.
>
> (4) Where, in pursuance of directions given under this rule money is paid into Court to be invested or otherwise dealt with, the money, including any interest thereon, shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred or paid out of Court, except in accordance with an order of the Court.

(5) paras (1) to (4) shall apply in relation to a counterclaim by or on behalf of a person under disability, and a claim made by or on behalf of such a person in an action by any other person for relief under section 361 of the Merchant Shipping Ordinance 1952 as if for references to a plaintiff and a litigation representative there were substituted references to a defendant. (Emphasis added.)

[145] Order 76 r 12 of the Rules of Court 2012 gives broad discretion to the court in the control of money recovered by a person under disability, who is defined as a minor or a mentally disturbed person within the meaning of the Mental Health Act 2001 (Act 615).

[146] Such discretion includes directions that the money shall, in whole or in part, be paid into court, invested or be paid to the litigation representative for the benefit of the person under disability or for his maintenance or to the plaintiff's solicitor in respect of costs (see *Malaysian Civil Procedure, 2024* (Vol 1) paras 76/1/4, 76/1/5 and 76/12 Sweet and Maxwell).

[147] I allow the request and shall make the order. Such an order was also granted in *Farah Ahmed Naji Al-Sahhaf v Dr Lee Weng Seng & Ors* [2017] MLJU 1725 (HC) by S Nantha Balan J at [87].

CONCLUSION FOR SUIT 397

[148] As regards Suit 397, counsel for the patient and her children who are the guarantors Mr Karthi Kanthabalan contends they are only liable to pay for the hospital bill for the dengue treatment. All expenses which were incurred after the fall must be borne by Prince Court Medical Centre.

[149] Counsel had informed me at the oral submissions on 22 August 2024 that parties are in agreement the hospital bill for the dengue treatment has been paid and is part of the RM84,000 bill that had been paid. Counsel is also in agreement that if the patient wins Suit 70, Suit 397 should be dismissed with costs.

[150] Therefore, since the patient has won Suit 70, Suit 397 should be dismissed with costs.

[151] I thank counsel for the parties for their submissions which had greatly assisted me.

DECISION

Suit 397

[152] For the reasons above, I dismiss Suit 397 with costs of RM40,000 to be paid by Prince Court Medical Centre to the patient subject to allocatur.

Suit 70

[153] For Suit 70 I allow the patient's claim against Prince Court Medical Centre with getting up costs of RM300,000 subject to allocatur and RM32,249.15 as out of pocket expenses.

[154] The patient's claim against Dr Nick Chong is dismissed but with a *Sanderson* order for his costs payable by the patient to be paid by Prince Court Medical Centre. Prince Court Medical Centre is to pay getting up costs of RM150,000 subject to allocatur and RM29,970.52 out of pocket expenses to Dr Nick Chong.

[155] The patient's claim against Nurse Zulia is dismissed. There shall be no order as to cost.

[156] Prince Court Medical Centre's claim against Dr Nick Chong for indemnity and contribution is dismissed with costs and Dr Nick Chong's counterclaim against Prince Court Medical Centre is allowed for prayers 16.1, 16.3 and 16.4 in respect of costs only. Costs of RM100,000 which is including out of pocket expenses to be paid by Prince Court Medical Centre to Dr Nick Chong subject to allocatur.

On quantum and interest for Suit 70

[157] I award the following damages and interest to the patient to be paid by Prince Court Medical Centre:

Table of comparison					
No	Item	The plaintiff (RM)	The first and third defendants (RM)	The second defendant (RM)	The court (RM)
A	Special damages (26 September 2018 to 11 December 2019)				
1	Hospital and medical expenses;	265,178.06 (Agreed)	265,178.06 (Agreed)	265,178.06 (Agreed)	265,178.06
2	Travelling expenses;	625.77 (Agreed)	625.77 (Agreed)	625.77 (pp 2611 to 2615 of Bundle B9) (Agreed)	625.77

3	The cost of physio therapy;	24,837.80 (Agreed)	24,837.80 (Agreed)	24,837.80 (Agreed)	24,837.80
4	The cost of equipment and assistive devices;	7,640 (Agreed)	7,640 (Agreed)	–	7,640
5	The cost of ambulance services, including the rental of oxygen cylinders;	17,195.60 (Agreed)	17,195.60 (pp 2641 to 2644 of Bundle B9) (Agreed)	17,195.60 (pp 2641 to 2665 of Bundle B9) (Agreed)	17,195.60
6	The cost of medication, supplements and other consum-ables;	57,633.71 (Agreed)	57,633.71 (Agreed)	57,633.71 (Agreed)	57,633.71
7	The cost of care provided by her family members and others;	5,500 (500 per month for 11 months) (Agreed)	5,500 (Agreed)	5,500 (500 per month for 11 months) (Agreed)	5,500
8	The cost of home renovations;	(Dropped)	–	–	–
9	The cost of engaging three part-time nurses;	148,500 (13,500 per month for 11 months) (Agreed)	148,500 (Agreed)	13,050	148,500
10	The cost of acupuncture treatment;	22,000 (2,000 per month for 11 months)	–	–	11,000 (RM1000 x 11 months)
11	The cost of personal care items;	3,300 (300 per month for 11 months) (Agreed)	3,300 (Agreed)	–	3,300

12	The cost of engaging two maids;	(Dropped)	–	–	–
B	Pre-trial damages				
13	Pre-trial period	56 months (12 December 2019 to date of judgment, say 26 August 2024)	56 months (12 December 2019 to date of judgment, say 26 August 2024)	56 months (11 December 2019 to date of judgment, say 26 August 2024)	
14	The hospital and medical expenses;	78,672.85 (Agreed)	78,672.85 (Agreed)	78,672.85 (Agreed)	78,672.85
15	Travelling expenses;	5,600 (100 per month for 56 months) (Agreed)	5,600 (Agreed)	5,600 (100 per month for 56 months) (Agreed)	5,600
16	The cost of rehabilitative treatment, including home physio therapy;	100,800 (1800 per month for 56 months) (Agreed)	100,800 (Agreed)	100,800 (1,800 per month for 56 months) (Agreed)	100,800
17	The cost of diapers;	11,200 (200 per month for 56 months) (Agreed)	11,200 (Agreed)	–	11,200
18	The cost of ambulance services;	30,000 (Dropped)	–	–	–
19	The cost of medication and supplements;	28,000 (500 a month for 56 months) (Agreed)	28,000 (Agreed)	10,800 (180 per month for 56 months)	28,000

20	The cost of care provided by her family members and others;	28,000 (500 per month for 56 months) (Agreed)	28,000 (500 per month for 56 months) (Agreed)	28,000 (500 per month for 56 months) (Agreed)	28,000
21	The cost of engaging one nurse and two trained caregivers;	756,000 (13,500 per month for 56 months) (Agreed)	756,000 (13,500 per month for 56 months) (Agreed)	756,000 (13,500 per month for 56 months) (Agreed)	756,000
22	The cost of accom modation, utilities and meals expenses of the plaintiff's carers;	84,000 (1,500 per month for 56 months) (Dropped)	–	–	–
23	The cost of acupuncture treatment;	112,000 (2,000 per month for 56 months)	–	–	56,000 (RM1000 x 56 months)
24	The cost of personal care and hygiene Items;	11,200 (200 per month for 56 months) (Agreed)	11200 (Agreed)	–	11,200
25	The cost of equipment;	30,000 (Agreed)	30,000 (Agreed)	30,000 (Agreed)	30,000
C	Future general damages				
	Multiplier life expectancy of 84 years, minus current age, 81 years	3	1.9 (82 years minus 81.25 years) *subject to submissions	1.9 (82.9 years minus 81 years) *subject to submissions	3
26	Cost of special assistive equipment				

26.1	The cost of 18-inch width wheelchair with anti-tippers, DFR, DAR, seat strap, chest strap, head control pommel, elevating leg rests;	1,500 (Agreed)	1,500 (Agreed)	950 (recliner wheelchair)	1,500
26.2	The cost of 18-inch ROHO wheelchair cushion;	1,800 (Agreed)	1,800 (Agreed)	1,800 (Agreed)	1,800
26.3	The cost of ripple mattress overlay with pump;	550 (Agreed)	550 (Agreed)	550 (Agreed)	550
26.4	The cost of kangaroo pump;	(Dropped)	–	–	–
26.5	The cost of Hi-Lo hospital bed, double fowler with mattress and removable cot sides;	5,000 (Agreed)	5,000 (Agreed)	5,000 (Agreed)	5,000
26.6	The cost of suction machine;	700 (Agreed)	700 (Agreed)	700	700
26.7	The cost of suction pump;	(Refer to item 26.6)			

26.8	The cost of oxygen saturation (SPO2) home monitor;	158 (Agreed)	158 (Agreed)	158 (Agreed)	158
26.9	The cost of oxygen tank;	1,000 (Agreed)	1,000 (Agreed)	1,000 (Agreed)	1,000
26.10	The cost of oxygen concen-trator;	4,300 (Agreed)	4,300 (Agreed)	4,300 (Agreed)	4,300
26.11	The cost of glucometer;	119 (Dropped)	–	–	–
26.12	The cost of blood pressure set;	150 (Dropped)	135–180	–	–
26.13	The cost of thermo meter;	30 (Dropped)	30	–	–
26.14	The cost of pulse oximeter with alarm;	250 (Dropped)	180–300	–	–
26.15	The cost of TED stockings;	1,170 (90 with 12 re placements) (Agreed)	1,170 (Agreed)	1,170 (Agreed)	1,170
26.16	The cost of cardex table;	350 (Agreed)	350 (Agreed)	350 (Agreed)	350
26.17	The cost of air purifier;	3,000 (Agreed)	3,000 (Agreed)	3,000 (Agreed)	3,000
26.18	The cost of chest vibrator (Lega®);	4,000 (Agreed)	4,000 (Agreed)	4,000 (Agreed)	4,000
26.19	The cost of manual tilt table;	6,500 (Agreed)	6,500 (Agreed)	6,500 (Agreed)	6,500

26.20	The cost of ankle foot orthoses (AFO);	900 (300 with two re-placements) (Agreed)	900 (300 with two re-placements) (Agreed)	300 each	900
26.21	The cost of wrist hand orthosis (WHO);	500 (Agreed)	500 (Agreed)	–	500
26.22	The cost of heel protectors;	320 (160 with one replacement) (Agreed)	320 (Agreed)	160 each	320
26.23	The cost of four position wedges;	800 (Agreed)	800 (Agreed)	200 each	800
26.24	The cost of Nebulizer;	480 (Agreed)	480 (Agreed)	480 each (Agreed)	480
26.25	The cost of percuta-neous entero gastrostomy ('PEG') tube;	3,500 (500 with seven re-placements) (Agreed)	3,500 (Agreed)	1,350 (450 every six monthly with three re-placements)	3,500
26.26	The cost of Shiley double lumen trache ostomy;	1,800 (300 with five re placements) (Agreed)	1,800 (300 with five re placements) (Agreed)	300 each	1,800
26.27	The cost of Hoist;	5,000 (Agreed)	5,000 (Agreed)	5,000 (Agreed)	5,000
26.28	The cost of trache-ostomy shower cover;	200 (Agreed)	200 (Agreed)	–	200

26.29	The cost of 18-inch reclining shower commode wheelchair;	1,500 (Agreed)	1,500 (Agreed)	–	1,500
26.30	The cost of two portable ramps;	400 (200 each) (Agreed)	400 (Agreed)	–	400
26.31	Electric toothbrush replacement heads	140 440 (Agreed)	140 440 (Agreed)	–	140 440
26.32	The cost of trans electrical nerve stimulator	299 (Agreed)	299 (Agreed)	299 (Agreed)	299
27	Medical and therapy needs				
27.1	The cost of occupational therapy sessions at therapy centers;	46,080 (160 per session for 288 sessions) (Dropped)	–	–	–
27.2	The cost of occupational therapy sessions at home;	43,200 (150 per session for 288 sessions) (Quantum agreed)	(150 per session)	26,400 (150 per session, eight times a month, for 22 month (176 sessions))	43,200
27.3	The cost of physio-therapy sessions at therapy centers;	46,080 (160 per session for 288 sessions) (Dropped)	–	–	–

27.4	The cost of physio therapy sessions at home;	43,200 (150 per session for 288 sessions) (Quantum agreed)	(150 per session)	39,600 (150 per session for 12 times a month for 22 months)	43,200
27.5	The cost of speech therapy sessions;	1,150 (115 per session for ten sessions)	80 per session	–	1,150 (115 per session for ten sessions)
27.6	The cost of acupuncture sessions;	72,000 (2,000 per month for 36 sessions)	–		36,000 (RM 1000 x 36)
28	Cost of consumables				
28.1	The cost of Silicone Ryle's tubes;	2,160 (60 per month for 36 months) (Dropped)	–	–	–
28.2	The cost of suction catheters;	2,160 (60 per month for 36 months) (Agreed)	2,160 (60 per month for 36 months) (Agreed)	1,320 (60 per month for 22 months)	2,160
28.3	The cost of silicone bladder catheter;	480 (80 for with six re placements) (Agreed)	480 (80 for with six re placements) (Agreed)	–	480
28.4	The cost of oxygen tank refill;	2,400 (200 with 12 re placements) (Agreed)	2,400 (200 every three months) (Agreed)	1,400 (200 every three months with seven re-placements)	2,400
28.5	The cost of purchasing Peptamen nutritional support;	72,000 (2,000 per month for 36 months) (Agreed)	72,000 (Agreed)	20,394 (30.90 per day for 22 months)	72,000

28.6	The cost of continuous bladder drainage bag;	630 (105 per month with six re placements) (Dropped)	–	–	–
28.7	The cost of glucometer strips;	2,160 (60 per month with 36 re-place ments) (Dropped)	–	1,320 (two per day for 22 months)	–
28.8	The cost of purchasing various other nursing care consumables (gauze, cotton, gloves and others);	7,200 (200 per month for 36 months) (Quantum agreed)	(200 per month)	4,400 (200 per month for 22 months)	7,200
28.9	The cost of diapers;	12,600 (350 per month for three years)	(200 per month)	5,775 (8.75 per day for 22 months)	12,600
29	Cost of medical consultations				
29.1	The cost of consultations with a rehab ilitation physician;	1,575 (175 per visit for nine visits) (Quantum agreed)	(175 per visit)	997.5 (175 per visit for three times a year for 1.9 years)	1,575
29.2	The cost of consult ations with a dietician;	480 (80 per visit for six visits) (Quantum agreed)	(80 per visit)	–	480
29.3	The cost of con sultations with a neuro surgeon;	1,575 (175 per visit for ine visits) (Quantum agreed)	(175 per visit)	997.5 (175 per visit for three times a year for 1.9 years)	1,575

29.4	The cost of con sultations with a neurologist;	1,080 (180 per visit for six visits) (Quantum agreed)	(180 per visit)	–	1,080
29.5	The cost of con sultations with a general physician;	1,575 (175 per visit for nine visits) (Quantum agreed)	(175 per visit)	997.5 (175 per visit for three times a year for 1.9 years)	1,575
29.6	The cost of con sultations with an ENT surgeon;	540 (180 per visit for three visits) (Quantum agreed)	(180 per visit)	–	540
29.7	The cost of con sultations with a gastro surgeon;	1,050 (175 per visit for six visits) (Quantum agreed)	(175 per visit)	665 (175 per visit for twice a year for 1.9 years)	1,050
29.8	The cost of con sultations with a geriatrician or a palliative care physician;	1,080 (180 per visit for six visits) (Quantum agreed)	(180 per visit)	–	1,080
29.9	The cost of an insertion of a VP Shunt;	9,100 (Dropped)	–	–	–
29.10	The cost of hospital admissions;	15,000 (5,000 per year) (Quantum agreed)	(5,000 per year)	(5,000 per year)	15,000
30	Cost of Medicines and Supplements				

30.1	The cost of purchasing NeuroAid II tabs;	62,640 (1,740 per month for 36 months) (Quantum agreed)	(1,740 per month)	38,280 (1,740 per month for 22 months)	62,640
30.2	The cost of Norvasc;	1,620 45 per monthfor 36 months) (Dropped)	–	–	–
30.3	The cost of Copastin;	1,728 (48 per month for 36 months) (Quantum agreed)	(48 per month)	1,056 (48 per month for 22 months)	1,728
30.4	The cost of Prevacid;	7,992 (222 per month for 36 months) (Quantum agreed)	(222 per month)	4,884 (222 per month for 22 months)	7,992
30.5	The cost of purchasing vitamin C tablets;	610.20 (16.95 per month for 36 months (Quantum agreed)	(16.95 per month)	372.90 (16.95 per month for 22 months)	610.20
30.6	The cost of purchasing cap Essential;	1,321.20 (36.70 per month for 36 months) (Quantum agreed)	(36.70 per month)	807.40 (36.70 per month for 22 months)	1,321.20
30.7	The cost of Maxolon;	360 (ten per month for 36 months) (Quantum agreed)	(ten per month)	220 (ten per month for 22 months)	360

30.8	The cost of purchasing Euthyrox tabs;	540 (15 per month for 36 months) (Dropped)	–	–	–
30.9	The cost of purchasing Amlodipine;	907.20 (25.20 per month for 36 months) (Dropped)	–	–	–
30.10	The cost of Nebulizer vials;	2,700 (75 per month for 36 months (Quantum agreed)	(75 per month)	–	2,700
30.11	The cost of Fluimucil sachet;	4,050 (112.50 per month for 36 months) (Quantum agreed)	(112.50 per month)	2,475 (112.50 per month for 22 months)	4,050
30.12	The cost of Piracetam;	120.60 (20.10 per month for 6 months) (Quantum agreed)	(20.10 per month)	–	120.60
30.13	The cost of purchasing syrup paracetamol;	4,320 (120 per month for 36 months) (Quantum agreed)	(120 per month)	–	4,320
30.14	The cost of Atorvastin;	2,008.80 (55.80 per month for 36 months) (Dropped)	Free at government hospital	–	–

30.15	The cost of Lans oprazole;	864 (24 per month for 36 months) (Quantum agreed)	(24 per month)	–	864
30.16	The cost of Cardipirin;	385.20 (10.70 per month for 36 months) (Dropped)	Free at government hospital	–	–
30.17	The cost of Milk feed formula;	18,000 (500 per month for 36 months) (Dropped)	4,872.75	–	–
30.18	The cost of botulinum toxin injection;	10,800 (1,200 for three injections every four months for 36 months)	Free at government hospital	–	10,800
	Future general damages (others)				
31	The cost of engaging three trained caregivers;	648,000 (18,000 per month for 36 months) (Quantum agreed)	(18,000 per month)	88,000 (4,000 per month for 22 months)	648,000
32	Cost of engaging full-time trained maid;	(Dropped)	18,000	26,400 (1,200 per month for 22 months)	–

33	The accomm-odation, utilities and meals expenses of the plaintiff's carers;	54,000 (1,500 a month for 36 months) (Dropped)	–	–	–
34	Travelling expenses;	3,600 (100 per month for 36 months)	–	–	3,600
35	The cost of engaging a part-time driver;	54,000 (1,500 per month for 36 months) (Dropped)	–	–	–
36	The value of care provided by family members;	18,000 (500 per month for 36 months) (Quantum agreed)	500 per month	500 per month for 22 months	18,000
37	Cost of ambulance services;	6,000 (2,000 per year for three years)	–	–	6,000
D	Damages for pain and suffering and loss of amenities of life	600,000	300,000	335,700	500,000
E	Aggravated damages	1m	–	–	1m
F	Costs				

38	Getting-up fee for liability and quantum proceedings;	300,000	–	–	300,000
39	Out of pocket expenses;	35,403.20	–	–	32,249.15
G	Interest				
40	Interest on special damages of RM at the rate of 4%pa from 26 September 2018 up to the date of filing of writ, 11 December 2019;	4%	–	–	5%
41	Interest on pre-trial damages, general damages for pain and suffering and loss of amenities of life, aggravated damages totalling	8%	–	–	5%

	RM at the rate of 8%pa from the date of service of the writ, 12 December 2019 until the date of judgment; and				
42	Interest on the judgment sum (including costs and pre-judgment interest) at the rate of 5% per annum from the date of judgment to the date of payment.	5%	–	–	5%

[158] Pursuant to O 76 r 12 of the Rules of Court 2012, Goh Seng Cha shall hold and manage the judgment sum for the benefit of the patient.

Suit 70 against Prince Court allowed; claims against Dr Nick Chong,Nurse Zulia and Suit 397 dismissed.

Reported by Ashok Kumar